

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 842

B. I. SALINGER, JR., APPELLANT,

vs.

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE
EASTERN DISTRICT OF LOUISIANA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF LOUISIANA

FILED MAY 24, 1923

(29,647)

(29,647)

SUPREME COURT OF THE UNITED STATES

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VICTOR LOISEL, UNITED STATES MARSHAL FOR THE
EASTERN DISTRICT OF LOUISIANA

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[fol. 1] UNITED STATES OF AMERICA:

**DISTRICT COURT OF THE UNITED STATES, EASTERN
DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION**

No. 17238

UNITED STATES ex Rel. B. I. SALINGER, JR.,

versus

VICTOR LOISEL, United States Marshal

Appearances: St. Clair Adams, Esq., Attorney for B. I. Salinger, Jr., Appellant; Louis P. Bryant, Jr., Esq., Assistant United States Attorney for the Eastern District of Louisiana; S. W. Clark, U. S. Attorney for the District of South Dakota, attorneys for Victor Loisel, United States Marshal, et al., Appellees.

Appeal from the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, Returnable within 30 Days from April 27, 1923, at the City of Washington, D. C.

[fol. 2] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

No. 17238

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed April 18th, 1923

To the Honorable the District Court of the United States in and for the Eastern District of Louisiana, in the Fifth Judicial Circuit:

The Petition of B. I. Salinger, Jr., respectfully shows:

1. That petitioner is a resident of Sioux City, in the State of Iowa, and is a citizen of said State and of the United States of America.
2. That petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States in the custody of Victor Loisel, Esquire, United States Marshal in and for the Eastern District of Louisiana, to-wit: at the City of New Orleans in the said District.
3. That the sole claim and the sole authority by virtue of which the said Victor Loisel, Marshal as aforesaid, so restrains and detains your petitioner, is a certain paper which purports to be a commitment, in writing, a copy of which is hereunto annexed and marked for identification herewith Petitioner's Exhibit "A."

4. That, upon information and belief, the said commitment was issued by Arthur H. Brown, Esquire, United States Commissioner, by virtue of a certain indictment found against petitioner in the proceeding entitled "United States versus B. I. Salinger, Jr., No. 983 W. D., in the District Court of the United States for the District of [fol. 3] South Dakota, Western Division," charging petitioner with the violation of Article 215 of the Penal Code of the United States, with reference to using the mails to defraud, all of which will more fully and at large appear by reference to a copy of said indictment hereto annexed as part hereof and for identification herewith marked "Petitioner's Exhibit B."

5. That petitioner did not commit the crime of using the mails to defraud as set forth in said indictment or otherwise within the jurisdiction of the said District of South Dakota or elsewhere, and upon information and belief that he had no connection whatever with the mailing or causing to be delivered of any letter set out in the indictment, unless it be those charged to have been signed by him (and as to them he cannot say for he has not been permitted any inspection of them) and that if he had anything to do with any of them, it could only have been in the State of Iowa, for he was never in the State of South Dakota at any time between the dates of the first letter set out and the date of the last one, nor at the time of nor since the return of said indictment.

6. That said indictment is void and your petitioner's detention illegal, and in denial of his rights under the Constitution of the United States, and particularly under the Fifth and Sixth Amendments thereof, and under Section Two of Article Three thereof, because:

[fol. 4] (a) Said indictment and each and every count thereof fails to state facts sufficient to charge this petitioner or any of the defendants therein named with any crime or offense against the United States or any law thereof, and fails to describe any crime or offense in violation of or punishable under any of the laws of the United States.

(b) Said indictment and each and every count thereof fails to state facts sufficient to charge the petitioner or any of the defendants therein named with the commission of any crime or offense against the United States or any law thereof within the District of South Dakota or any Division thereof.

(c) Said indictment and each and every count thereof fails to state facts sufficient to charge petitioner or any of the defendants therein named with the commission of any crime or offense against the United States or any law thereof within the Western Division of the District of South Dakota.

(d) Said indictment shows on its face that the letters made the basis of the charge therein, were of such character and written at such times as to have been incapable of being in execution or fur-

therance of any scheme to defraud because the indictment and said letters show that whatever scheme is alleged to have been devised had been fully executed before the letters are charged to have been written or mailed.

(e) If any offense against the laws of the United States be charged at all, and your petitioner says that no such offense is so charged, [fol. 5] such facts as are charged show that no offense was committed by your petitioner or by any or all of the defendants named in said indictment within the District of South Dakota, or any Division thereof, and that therefore said indictment and any proceedings thereunder, and especially any trial, are and would be in violation of the rights of petitioner under the Fifth and Sixth Amendments of the Constitution of the United States, and of his rights under Section two or Article Three thereof.

(f) Petitioner protesting that said indictment does not charge any offense at all, and if any, none within the jurisdiction of the Court to which said indictment was returned, in any event such offense as may be found to be charged in the indictment is charged to have been committed, at least according to the conclusion of the pleader, in the Southern Division of South Dakota, whereas the indictment was returned at and by a Grand Jury sitting in and for the Western Division of South Dakota.

(g) Petitioner further says that by reason of the provisions of Section 53 of the Judicial Code of the United States, said Grand Jury was entirely without power or authority to return said indictment, and said Court was without power or authority to receive it, and that the defendant Marshal is now for like reasons without power or jurisdiction to take any proceedings under said invalid indictment, and particularly to arrest or detain or imprison your petitioner, upon any warrant issued that is founded upon said indictment, and particularly without power or jurisdiction to direct the removal of your petitioner to the District of South Dakota, and in any [fol. 6] event, has no power — direct the return of your petitioner to the Southern Division of the District of South Dakota, wherein no indictment has been found against your petitioner, and your petitioner says that any detention, removal or trial under said indictment, or by virtue of any process thereunder, would be in violation of the Fifth and Sixth Amendments to and of Section Two of Article Three of the Constitution of the United States.

7. That petitioner shows further that no motion has ever been made by him or for him with his consent for the transfer of the proceedings under said indictment from the Western Division of the District of South Dakota, where it was returned, to any other place or division, but that in his absence from said District and without his motion or consent, the said indictment and all proceedings thereunder, were upon the motion of the Government, by the Court then sitting in the Southern Division of the District of South Dakota, transferred to that last named Division, and that petitioner's

detention for and removal to said Southern Division of the District of South Dakota, is and any such removal would be, in violation of petitioner's rights under the Constitution of the United States, and particularly of those parts specifically referred to in other places in this petition.

8. Upon information and belief, the said commitment is, for these and other reasons, absolutely void, and your petitioner is now confined and deprived of his liberty, in violation of the Constitution of the United States, and in violation of the statutes of the United States, and will, if the writ herein prayed for be not granted, be under color of said void indictment and commitment, removed [fol. 7] to the Southern Division of the said District of South Dakota, or be compelled to enter into security for his appearance there, or be so removed to or compelled to give security for his appearance at some other place within the said District of South Dakota.

Wherefore, your petitioner prays that a writ of habeas corpus may issue directed to the said Victor Loisel, Esquire, Marshal of the United States, and to each and all of his deputies, requiring him and them to bring and have your petitioner before this Court at a time to be by this Court determined, together with the true cause of the detention of your petitioner, to the end that due inquiry may be had in the premises; and that a writ of certiorari may at the same time issue directed to the said Arthur H. Brown, Esquire, United States Commissioner for the Eastern District of Louisiana directing him to certify to this Court all the proceedings that took place before him and all the evidence that was offered before him in the said proceedings which resulted in the issue of the said commitment; and that this Court may proceed in the summary way to determine the facts of this case in that regard, and the legality of your petitioner's imprisonment, restraint and detention, and thereupon to dispose of your petitioner as law and justice may require.

And your petitioner will ever pray.

Dated at the City of New Orleans, the eighteenth day of April, A. D. 1923.

(Signed) St. Clair Adams, Attorney for Petitioner.

[fol. 8] Affidavit to above paper omitted in printing.

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

ORDER ISSUING WRIT OF HABEAS CORPUS

Now on this eighteenth day of April, A. D. 1923, the above matter coming on upon the petition for the issuance of a writ of habeas corpus, it is hereby ordered that said writ issue as in said petition prayed, returnable to and before this Court at 11 o'clock A. M. of

the 20th day of April, A. D. 1923; and the petitioner is hereby admitted to bail pending said hearing in the sum of Fifteen Thousand 00/100 Dollars, and ordered released upon giving satisfactory security for his appearance on said return day or at such further time as the Court may from time to time direct; and it is hereby further ordered that writ of certiorari issue herein, directed to Arthur H. Brown, Esquire, United States Commissioner for the Eastern District of Louisiana, directing him to certify to this Court all the proceedings that took place before him and all the evidence that was offered before him in the said proceedings which resulted in the issuance of the said commitment, returnable to and before this Court at 11 o'clock A. M. of the 20th day of April, A. D. 1923.

By the Court.

(Signed) Rufus E. Foster, Judge.

[fol. 9] EXHIBIT FOR PETITION: FINAL MITTIMUS—Filed Apr. 18, 1923

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

The President of the United States of America to the Marshal of the Eastern District of Louisiana and to the Keeper of the House of Detention in the city of New Orleans, Greeting:

Whereas, Ben J. Salinger, Jr., ha- been arrested upon the oath of L. P. Bryant, Jr., for having, on or about the 20 day of May, 1923, in said District, in violation of Sec. 215 CC. of the United States, unlawfully use- the mails with a scheme to defraud;

And, after an examination being this day had by me, it appearing to me that said offense had been committed, and probable cause being shown to believe said Ben J. Salinger, Jr., committed said offense as charged, I have directed that said Ben J. Salinger, Jr., be held to bail in the sum of \$15,000 to appear before the District Court of the United States for the Eastern District of Louisiana on the 20 day of April, 1923, and from time to time thereafter to which the case may be continued and he having failed to give the required bail:

Now these are therefore, in the name and by the authority aforesaid, to command you, the said Marshal, to commit the said Ben J. Salinger, Jr., to the custody of the Keeper of said Jail of the City of New Orleans, and to leave with said Jailer a certified copy of this writ; and to command you, the Keeper of said Jail of said City, to receive the said Ben J. Salinger, Jr., prisoner of the United States of America, into your custody, in said Jail, and him there safely to keep until he be discharged by due course of law.

Witness whereof, I have hereto set my hand and seal at my office in said District this 18 day of April A. D. 1923.

(Signed) A. H. Browne, United States Commissioner for said Eastern District of Louisiana. (Seal.)

[fol. 10] UNITED STATES DISTRICT — OF LOUISIANA, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

[Title omitted]

ANSWER AND RETURN TO PETITION AND WRIT FOR HABEAS CORPUS—
Filed April 20, 1923

To the Honorable the District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division:

Now into court comes Victor Loisel, United States Marshal for the Eastern District of Louisiana, the defendant herein, through L. P. Bryant, Jr., Assistant United States Attorney, and for answer to Plaintiff's petition says:

I. For lack of sufficient information to justify a belief, Respondent accordingly denies the allegations of fact contained in Article I of Plaintiff's petition.

II. Respondent admits that petitioner has heretofore been actually imprisoned and restrained of his liberty, as set forth in Article II of Plaintiff's petition, but Respondent shows that petitioner is now at liberty under bond.

III. For answer to Article III, Respondent adopts as his answer, his answer to Article II of Plaintiff's petition.

IV. Respondent admits the allegations of fact contained in Article IV of Plaintiff's petition.

[fol. 11] V. Respondent denies the allegations of fact contained in Article V of Plaintiff's petition.

VI. Answering Article VI of Plaintiff's petition and the sub-sections a, b, c, d, e, f and g thereof, Respondent denies all the allegations of fact therein contained.

VII. Respondent admits that the indictment was found by a Grand Jury in the Western Division of the District of South Dakota, and thereafter, by order of the Court, the place of trial set for the Southern Division of said District of South Dakota, but that said order of Court, was made in open court and in the presence of attorneys representing petitioner herein.

Respondent denies all other allegations contained in Article VII of Plaintiff's petition.

VIII. Respondent denies all the allegations of fact contained in Article VIII of Plaintiff's petition.

Now for further answer and return to the writ, herein Respondent shows:

That petitioner herein was indicted by a Grand Jury of the United States, drawn from the body of the District of South Dakota,

at a term of court for said district held at the City of Deadwood within the Western Division of said District, on the third Tuesday of May, 1922; that a bench warrant was thereafter issued by the Judge of the District Court for the District of South Dakota, under the seal of said court, and placed in the hands of the Marshal for service upon the petitioner within the Southern District of California, [fol. 12] but that petitioner escaped from said Southern District of California before said bench warrant could be served and came to the Northern District of Iowa, and there, on or about the 8th of June, 1922, surrendered to a Commissioner of said District for the Northern District of Iowa, and gave bond in the penal sum of \$10,000, for his appearance before the District Court for the District of South Dakota, at the opening day of the October term thereof, to be held at Sioux Falls on the third Tuesday of October, 1922; that after giving said bond petitioner was released from custody, and at the opening day of the term of the District Court in the District of South Dakota, held on the third Tuesday in October, 1922, defendant failed to appear as conditioned in said bond, and thereupon such proceedings were had; that said bond was forfeited and a bench warrant issued by the District Court for the Arrest of petitioner; that thereafter and on or about the 17th day of October, 1922, petitioner was arrested in the City of New York, in the Southern Division of New York, and removal proceedings were instituted seeking to remove the petitioner from the Southern District of New York to the District of South Dakota, for trial; that petitioner was regularly committed by a United States Commissioner for the Southern District of New York to the District Court for the Southern District of New York, for an order of removal; that thereupon, and on or about the 8th day of November, 1922, petitioner sued out a writ of habeas corpus from the District Court for the Southern District of New York, and such proceedings were had, that thereafter and on or about the 14th day of November, 1922, said writ of habeas corpus was quashed by the District Court for the Southern District of New York, and Petitioner remanded to the custody of the Marshal for the Southern District [fol. 13] of New York, for removal to the District of South Dakota, that appeal was taken by petitioner from said order of removals, *the* Circuit Court of Appeals, for the Second Circuit, and such proceedings as thereafter had resulted in an affirmance of the order of removal granted by the District Court for the Southern District of New York and the Mandate was sent down from the Circuit Court of Appeals for the Second Circuit of the United States, to the District Court of the United States for the Southern District of New York, on the 14th day of March, 1922; that upon the receipt of said mandate the District Court for the Southern District of New York, on the 16th day of March, 1923, made its order of removal directing the Marshal of said District to transport the petitioner, B. I. Salinger Jr., to the District of South Dakota, and there place him in the custody of the United States Marshal for said District; that pending said appeal petitioner herein had been given liberty, under bond, in the penal sum of \$10,000, and upon the issuance of the order of removal as above set forth petitioner appeared before the District

Court for the Southern District of New York, and asked leave to give a bond conditioned for his appearance before the District Court of the District of South Dakota as in lieu and substitution for his removal by the Marshal; that the order of removal was made by Judge Augustus N. Hand, one of the Judges of the District Court for the Southern District of New York, but that the application of petitioner for a bond was made before Judge W. M. C Van Fleet, one of the other Judges of said district, and thereupon, an order was made by the said Judge W. M. C. Van Fleet, that petitioner be permitted to give a bond in the penal sum of \$15,000, conditioned for [fol. 14] his appearance before the District Court for the District of South Dakota, for trial at the opening day of the April, 1923, term thereof, holden at Sioux Falls, within said District; that said order allowing petitioner to give bond for his appearance before the District Court of the District of South Dakota, is of date March 20th, 1923, and that thereupon, and in pursuance of said order petitioner herein gave a bond to the United States of America in the penal sum of \$15,000, wherein he signed as principal, and wherein the Southern Surety Co. of Des Moines, Iowa, a corporation, signed as surety, conditioned for the appearance of petitioner, herein, for trial in the District Court of the United States for the District of South Dakota, to be holden at the City of Sioux Falls in said District, on the first Tuesday of April, 1923, to-wit: the third day of April, 1923, at the hour of 10:00 a. m., upon the indictment filed in said District, which said bond was approved and filed on the said 20th day of March, 1923, and petitioner was thereupon allowed his liberty; that on the 31st day of March, 1923, petitioner herein and one Edward A. Parsons, an attorney-at-law, of the City of New Orleans, Louisiana, appeared at the office of Respondent, at the Federal Building in the City of New Orleans, and the said Edward A. Parsons, declaring himself to be an attorney of the Southern Surety Company of Des Moines, Iowa, introduced petitioner to a Deputy of Respondent as one B. I. Salinger, Jr., and stated that he desired to surrender petitioner to Respondent in behalf of his client, the said Southern Surety Company; that the said Parsons withdrew and the said Deputy stated to petitioner that he did not think he had any right to accept his surrender; that thereupon, petitioner stated to said Deputy that he [fol. 15] was a lawyer and protested that the surety had a right to surrender him to Respondent, and that any Marshal of any District of the United States had the right to accept the custody of a bonded party when he was surrendered by his bondsman even though the party-defendant had given bond to appear in a jurisdiction other than the one in which he might attempt to surrender himself; that notwithstanding the protest of Respondent the said petitioner insisted upon the right of his surety to surrender him in the manner and form aforesaid, and thereafter, a commitment was issued by Arthur H. Browne, United States Commissioner for the Eastern District of Louisiana, purporting to commit petitioner to the custody of Respondent by reason of his pretended surrender by his bondsman, and that almost immediately thereafter Respondent procured his release by giving bond for his appearance in the sum of \$5,000, and Re-

spondent further states, upon information and belief, that petitioner never responded to the bond hereinbefore mentioned in the sum of \$15,000, conditioned for his appearance before the Court for trial at the City of Sioux Falls, South Dakota, on the 3rd day of April, 1923, or at any time thereafter; that on the 4th day of April, 1923, the Judge of the District Court for the District of South Dakota, entered its order forfeiting said bond and issued the bench warrant of said court for the arrest of petitioner, herein, and that ever since said 4th of April, 1923 said petitioner has been and is now a fugitive from justice; that on the 6th day of April, 1923, a verified complaint was filed with the United States Commissioner, Arthur H. Browne, wherein it appeared that an indictment had been returned by a Grand Jury for the District of South Dakota against petitioner [fol. 16] herein, at a term held in said District of South Dakota, on the 20th day of May, 1922, and that a bench warrant had been issued thereunder, and thereupon, the said Commissioner, Arthur H. Browne, issued his warrant of arrest for petitioner, herein, and under and by virtue of said warrant of arrest Respondent took the said petitioner into his custody at the City of New Orleans, Louisiana, and detained him for a few moments, only, during which time, petitioner gave bond for his appearance in the penal sum of \$15,000, and was released; that on the 18th day of April, 1923, a hearing was had before said United States Commissioner, at his office, in the City of New Orleans, Louisiana and such proceedings were had that said petitioner was held to answer to the District Court of the United States for the Eastern District of Louisiana, and the committment issued in the form of copy of same attached to petitioner's petition herein; that Respondent received said committment from the said Arthur H. Browne, United States Commissioner, as aforesaid, and took petitioner into his custody on the 18th day of April, 1923, at New Orleans, Louisiana, but that petitioner almost immediately thereafter gave bond in the sum of \$15,000, to appear before the District Court for the Eastern District of Louisiana, and that he is now at liberty, under bond; and Respondent shows that the only custody and detention of petitioner was as above set forth, and that he does not now have the custody of petitioner.

Wherefore: Respondent prays that the writ of habeas corpus herein may be dismissed and that the petitioner be dealt with as law and justice may require.

(Signed) L. P. Bryant, Jr., Assistant U. S. Attorney.
(Signed) S. W. Clark, U. S. Attorney for the District of South Dakota.

[fol. 17] Affidavit of Victor Loisel to above paper omitted in printing.

Motion for Transfer to District of South Dakota, Filed May 2, 1923

M-356-7

7. Application for Order of Transfer

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF SOUTH
DAKOTA, WESTERN DIVISION

No. 983, W. D.

THE UNITED STATES OF AMERICA, Plaintiff,
against

FRED C. SAWYER, C. H. BURLINGAME, and B. I. SALINGER, JR.,
Defendants

MOTION TO TRANSFER—Filed Oct. 17, 1922

Comes now S. W. Clark, the United States Attorney for the District of South Dakota, and respectfully shows unto the Court that the indictment in the above entitled cause was returned by a Grand Jury of the United States drawn from the body of the District at a Session of this Court held at the City of Deadwood, Lawrence County, South Dakota, within the Western Division, beginning on the third Tuesday in May, 1922; but that by the recitals in said indictment it appears that the acts complained of were committed within the Southern Division of the District of South Dakota, and that the trial and all further proceedings herein should be and — within the Southern Division of this District, and by reason thereof application is now made for an order of the Court transferring said cause from the Western Division of the District of South Dakota, to the Southern Division of said District, for all further proceedings herein.

Presented in open Court at Sioux Falls, South Dakota, this 17th day of October A. D. 1922.

(Signed) S. W. Clark, United States Attorney for the District of South Dakota.

[fol. 19] [File endorsement omitted.]

UNITED STATES OF AMERICA,
District of South Dakota, ss:

CLERK'S CERTIFICATE

I, Jerry Carleton, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy is a correct transcript from such original.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at Sioux Falls, in said District this 23rd day of October, A. D. 1922.

(Signed) Jerry Carleton, Clerk. (Seal of U. S. District Court, Dist. of South Dakota.)

DEFENDANTS' EXHIBIT B—Continued

UNITED STATES OF AMERICA,
District of South Dakota, ss:

JUDGE'S CERTIFICATE TO CLERK'S

I, James D. Elliott, Judge of the District — of the United States within and for the District aforementioned the same being a Court of Record, within and for the District aforesaid, do hereby certify, that Jerry Carleton, is Clerk of said Court, and was such Clerk at the time of making and subscribing to the foregoing certificate, and that the attestation of said Clerk in in due form of law and by the proper officer.

In testimony whereof, I do hereby subscribe my name at Sioux Falls, South Dakota, this 23rd day of October, A. D. 1922.

(Signed) Jas. D. Elliott, Judge of the District Court of the United States for the District of of South Dakota. (Seal of District Court of the United States for the District of South Dakota.)

[fol. 20] UNITED STATES OF AMERICA,
District of South Dakota, ss:

CLERK'S CERTIFICATE

I, Jerry Carleton, Clerk of the District Court of the United States of America within and for the District aforesaid, do hereby certify, that the Honorable James D. Elliott, whose name is subscribed to the foregoing certificate, was, at the time of subscribing the same, Judge of the District Court, within and for the District aforesaid,

duly commissioned and qualified and that full faith and credit are due to all his official acts as such.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Sioux Falls, in said District, this 23rd day of October, A. D. 1922.

(Signed) Jerry Carleton, Clerk of the United States District Court for the District Court of South Dakota. (Seal of the U. S. District Court, Dist. of South Dakota.)

[File endorsement omitted.]

[fol. 21] UNITED STATES OF AMERICA,
Southern District of New York, ss:

CLERK'S CERTIFICATE

I, Alexander Gilechrist, Jr., Clerk of the District Court of the United States, for the Southern District of New York do hereby Certify that the writings annexed to this Certificate, namely Motion for transfer to District of South Dakota, filed December 27, 1922, in the case entitled: The United States of America vs. B. I. Salinger, Jr., et al., M-7-356, have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this twenty-eighth day of March, in the year of our Lord One Thousand Nine Hundred and twenty-three, and of the Independence of the said United States the One Hundred and Forty-seventh.

Alex Gilechrist, Jr., Clerk

[fol. 22] EXHIBIT IN EVIDENCE: INDICTMENT—Filed March 31, 1923

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE DISTRICT OF SOUTH DAKOTA IN THE EIGHTH JUDICIAL CIRCUIT

At a stated term of the District Court of the United States of America for the Western Division of the District of South Dakota begun and held at the city of Deadwood, within and for the district and circuit aforesaid, on the third Tuesday of May in the year of our Lord one thousand nine hundred and twenty-two.

The Grand Jurors of the United States of America, good and lawful men, summoned from the body of the District aforesaid, then and

there being duly empanelled, sworn and charged by the court aforesaid to diligently inquire and true presentment make for said District of South Dakota, in the name and by the authority of the United States of America, upon their oaths, do present:

That Fred C. Sawyer, whose full first name is to the Grand Jurors unknown, C. H. Burlingame, whose full first name is to the Grand Jurors unknown, and B. I. Salinger, Jr., whose full first name is to the Grand Jurors unknown, hereinafter called defendants, at and about the month of November, 1917, the exact date being to the Grand Jurors unknown, did devise a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses, representations and promises from the Midland Packing Company, a corporation thereafter to be created, A. L. Will, Frank Groesbeck, Thomas Mansheim, C. H. Halley, Martin Christensen, P. L. Peterson, Alfred Christensen, Will Hartman, G. A. Hegstrom, Theodore Anker, P. C. Peterson, W. M. Rowley, W. J. Shanard, Archie C. Jensen, and divers other persons whose names are to the Grand Jurors unknown (a class of persons residing within the United States of America, not susceptible, by reason of their great number and the lack of information on the part of the Grand Jurors, of being named herein, but comprising any and all persons whom the defendants could induce to purchase stock of said corporation, the persons so intended to be defrauded being hereinafter referred to as the victims or said victims), by inducing by fraudulent representations, pretenses and promises, and by fraudulent artifices and devices, said victims, as hereinafter more fully set forth, so intended to be defrauded, to part with their money and property in the purchase of shares of stock in the said Midland Packing Company, a corporation thereafter to be created, said scheme and artifice being more particularly set forth as follows:

That the defendants, on or about the 12th day of March, 1918, caused to be incorporated the Midland Packing Company, and that at all times from March 12, A. D. 1918, to May 7, A. D. 1920, the Midland Packing Company was a corporation organized and existing under and by virtue of the laws of the State of Iowa, and from March 12, 1918, to January 31, 1919, the authorized capital stock of the said Midland Packing Company was Three Million Five Hundred Thousand Dollars (\$3,500,000), consisting of twenty-five [fol. 23] thousand (25,000) shares of preferred stock of the par value of One Hundred Dollars (\$100) per share, and ten thousand (10,000) shares of common stock, of the par value of One Hundred Dollars (\$100) per share, and at all times from the first day of February, 1919, to the 7th day of May, 1920, the authorized capital stock of said Midland Packing Company was Eight Million Dollars (\$8,000,000), consisting of seventy thousand (70,000) shares of preferred stock of the par value of One Hundred Dollars (\$100) per share, and ten thousand (10,000) shares of common stock of the par value of One Hundred Dollars (\$100) per share;

That at all times from March 12, 1918, to May 7, 1920, the said Fred C. Sawyer was President of said Midland Packing Company, the said C. H. Burlingame was the Secretary and Treasurer of said

Midland Packing Company, and from March 23, 1918, to May 7, 1920, the said B. I. Salinger, Jr., was the Vice-President and General Counsel of the said Midland Packing Company: that the said Midland Packing Company will be hereinafter referred to as the corporation or said corporation; the said Fred C. Sawyer will be hereinafter referred to as Sawyer; the said C. H. Burlingame will be hereinafter referred to as Burlingame, and the said B. I. Salinger, Jr., will be hereinafter referred to as Salinger, and the said Sawyer, Burlingame and Salinger will be hereinafter referred to collectively as the defendants or said defendants;

That at all times from March 23 1918, to November 9, 1918, one H. M. Baine, whose full first name is to the Grand Jurors unknown, was a stock salesman and agent of the said corporation, sometimes referred to as director of finances; and from November 10, 1918, to May 7, 1920, one Tom G. Taylor, whose full first name is to the Grand Jurors unknown, was a stock salesman and agent of, and sometimes referred to as a director of finances of said corporation, and during the times aforesaid transacted business under the name and style of Tom G. Taylor & Company, or Tom G. Taylor & Co.; that the said H. M. Baine will be hereinafter referred to as Baine, and the said Tom G. Taylor will be hereinafter referred to as Taylor.

That heretofore, to-wit: On the dates and at and during the times hereinbefore specified, in the District of South Dakota and within the Southern Division thereof, and within the jurisdiction of this court, the said defendants, having heretofore devised, and intending to devise a scheme and artifice to defraud said corporation and said victims of its and their money and property in and by the various false and fraudulent pretenses, representations, promises, practices, artifices and devices as hereinafter more particularly set forth;

That is to say, that the defendants, at the times and with the intent and for the purpose as aforesaid, and as a part of the said scheme and artifice to defraud as aforesaid, caused the said Midland Packing Company to be incorporated as a part of said scheme, and caused the said Baine to enter into negotiations with Statter & Company, Packers, and H. Statter for the purchase of the property hereinafter described, and to be used in the manner as hereinafter stated; and having caused the said Baine to enter into an agreement with the said Statter & Company, Packers, and H. Statter for the purchase of the said property for the sum of Two Hundred Fifty Thousand Dollars (\$250,000) or thereabouts, the exact amount being to the Grand Jurors unknown, and intending to cause themselves to be elected as the officers of said corporation and to make use of their said positions for and in aid of the purposes hereinafter stated, and thereafter having caused themselves to be elected as such officers as hereinbefore stated, did, on or about the 18th day of June, A. D. 1918, the exact date being to the Grand Jurors unknown, cause to be issued to H. Statter forty-eight hundred fifty [fol. 24] four (4,854) shares of the capital stock of said corporation, as and for the ostensible and pretended consideration or purchase price to be paid to the said H. Statter and Statter & Com-

pany, Packers, a corporation organized under the laws of the State of South Dakota, for certain property referred to and described as the packing plant, assets and property of said Statter & Company, Packers, for the purchase of which said property the defendants had theretofore, on or about the 29th day of March, 1918, caused the said corporation to make and enter into an ostensible and pretended contract with said Statter & Company, Packers, in which said contract the consideration or purchase price for said property was fixed at Four Hundred Ninety-three Thousand Nine Hundred Dollars (\$493,900), and for the purchase of which said property the defendants had theretofore and as a part of said scheme and artifice to defraud, on or about November 6, 1917, the exact date being to the Grand Jurors unknown, caused the said Baine to negotiate and contract for as aforesaid for the said corporation, for a consideration of Two Hundred Fifty Thousand Dollars (\$250,000), and in connection with the issuance of the said forty-eight hundred fifty-four (4,854) shares of the capital stock of said corporation and as part of the said transaction, the defendants, pretending to act for said corporation, pretended to purchase from the said H. Statter twenty-two hundred fifty (2,250) shares of the said capital stock of said corporation, and in connection therewith caused to be assigned and transferred to the defendants and other persons whose names are to the Grand Jurors unknown, for the use and benefit of the defendants, of the said forty-eight hundred fifty-four (4,854) shares, twenty-three hundred fifty-four (2,354) shares, which said twenty-three hundred fifty-four (2,354) shares of stock the defendants thereafter caused to be sold as the stock and property of said corporation, for their own use and benefit; that the said ostensible and pretended issuance of the said forty-eight hundred fifty-four (4,854) shares of stock to the said H. Statter and the said pretended contract of purchase of the said property for the ostensible consideration of Four Hundred Ninety-three Thousand Nine Hundred Dollars (\$493,900) were colorable only and made with the intent to deceive and defraud the said corporation and victims;

That the defendants had theretofore, as a part of the said scheme and artifice to defraud, caused representations to be made to the Executive Council of the State of Iowa, under and in pursuance of the provisions of Chapter 71 of the Acts of the Thirty-second General Assembly of the State of Iowa, in connection with an application to the said Executive Council for authority to issue capital stock of said corporation in and for the ostensible purchase of the said property from the said Statter & Company, Packers, and H. Statter, and as a pretended appraisal of the said property, that the value of the said property and the price to be paid therefor by said corporation was Five Hundred Sixty-four Thousand Nine Hundred Dollars (\$564,900), and in reliance on such representations said Executive Council issued to the said corporation authority to issue its capital stock in the sum of Four Hundred Eighty-five Thousand, Four Hundred Dollars (\$485,400), subject to encumbrance against the sum of Seventy-nine Thousand Dollars (\$79,000) or thereabout, in and for the purchase of the said property; that the defendants

caused the said forty-eight hundred fifty-four (4,854) shares of the capital stock of said corporation to be issued as aforesaid, as the ostensible and pretended consideration and purchase price of the said property from the said Statter & Company, Packers, and H. Statter, subject to said encumbrance, whereas they, the defendants, had in fact purchased the said property and caused the same to be pur[fol. 25] chased, for a consideration of Two Hundred Fifty Thousand Dollars (\$250,000), and caused said sum to be paid to the said Statter & Company, Packers, and H. Statter, therefor, in money, notes, bonds, certificates of deposit and capital stock of said corporation, the exact amounts, kinds and denominations being to the Grand Jurors unknown, and did thereby and in the manner and by the pretenses and devices aforesaid, cause to be issued of the capital stock of the said corporation, twenty-three hundred fifty-four (2,354) shares thereof, without any consideration to the said corporation, and for their own use and benefit; that the defendants did thereby and in the manner aforesaid, purchase the said property from the said Statter & Company, Packers, and H. Statter, and cause the same to be purchased for the said corporation, for a consideration of Two Hundred Fifty Thousand Dollars (\$250,000), which it caused to be paid for in the manner aforesaid, and caused the said forty-eight hundred fifty-four (4,854) shares of the capital stock of said corporation to be issued as and in the manner aforesaid, as a pretended consideration for the purchase of said property and to enable them, in the manner aforesaid, to convert and appropriate to their own use and benefit, the said twenty-three hundred fifty-four (2,354) shares of the capital stock of said corporation, without any consideration to the said corporation, and did thereby and in the manner aforesaid, convert and appropriate to their own use the said twenty-three hundred fifty-four (2,354) shares of the capital stock of the said corporation, in fraud of the said corporation and victims, and in pursuance of said scheme and artifice to defraud as heretofore set forth;

That as a further part of said scheme and artifice as aforesaid, the defendants on or about the 22d day of April, 1918, for the purpose of securing authority from the South Dakota State Securities Commission under the provisions of Chapter 319 of the Session Laws passed by the Legislative Assembly of the State of South Dakota in 1913, made and caused to be made to the said South Dakota State Securities Commission an application for authority to sell the capital stock of said corporation in the State of South Dakota, and in and as a part of the said application, they caused to be filed and presented a statement purporting to be a complete and correct statement of the assets and liabilities of said corporation, in and by which they stated and represented that the valuation of the said properties of said Statter & Company, Packers, had been presented to the Executive Council of the State of Iowa for valuation in compliance with the laws of the State of Iowa, and that the said Executive Council, after having fully canvassed and investigated the value of said property, had authorized the said corporation to issue Four Hundred Eighty-five Thousand Four Hundred Dollars (\$485,400) of its capital stock

for the payment of said property, and that the said corporation had been able by contract to make the purchase of said property for an amount totaling Four Hundred Fourteen Thousand Four Hundred Dollars (\$414,400), thereby making a net saving to the said corporation of Seventy-one Thousand Dollars (\$71,000) over the authorized valuation of said property by the said Executive Council of Iowa, thus reducing ultimately the promotion expenses of said corporation very materially, thereby intending by the said statements and representations to represent to and have the said South Dakota State Securities Commission believe and understand that the Executive Council of the State of Iowa had, in pursuance of law, fully canvassed and investigated the value of said property and authorized the said issue of Four Hundred Eighty-five Thousand Four Hundred Dollars (\$485,400) of its capital stock for the payment of said property as the true value thereof, and also representing and [fol. 26] intending to represent to the said South Dakota State Securities Commission, that the said corporation had been able to make the purchase of said property for an amount totaling Four Hundred Fourteen Thousand Four Hundred Dollars (\$414,400) and had thereby saved to the said corporation in said transaction, the sum of Seventy-one Thousand Dollars (\$71,000), over and above the authorized valuation of said property by the Executive Council of Iowa, and had thereby reduced the promotion expenses of said corporation in the sum of the said Seventy-one Thousand Dollars (\$71,000) whereas the defendants had, by and through the said Baine, as hereinbefore stated, purchased and caused to be purchased, the property aforesaid from the said Statter & Company, Packers, and H. Statter, for the sum of Two Hundred Fifty Thousand Dollars (\$250,000) or thereabouts, and that on or about May 7, 1918, by means of such statements and representations, the defendants, in the manner aforesaid, caused and induced said South Dakota State Securities Commission to issue authority to the said corporation to sell the capital stock of said corporation up to the amount of One Hundred Thousand Dollars (\$100,000) in the State of South Dakota, and thereafter, by means of the said statements and representations and other false and fraudulent statements and representations, the particulars of which are to the Grand Jurors unknown, the defendants did, on or about July 25, 1919, cause and induce the said South Dakota State Securities Commission to authorize said corporation to sell its capital stock in the State of South Dakota, up to the amount of Two Hundred Thousand Dollars (\$200,000); that by means of the authority so granted by the said South Dakota State Securities Commission, the defendants caused the capital stock of the said corporation to be sold, in the State of South Dakota, in and during the years 1918, 1919 and 1920, in an amount largely in excess of the sum of Two Hundred Thousand Dollars (\$200,000), by the means and in the manner as hereininafter set forth;

That as a further part of said scheme and artifice to defraud, the defendants, in and as a part thereto, caused an agreement to be entered into between the said corporation and the said Baine, bearing date March 23, 1918, in and by which the defendants caused the said

corporation to agree with the said Baine that he should have the exclusive right to sell all of the capital stock of said corporation at par, and the exclusive option to sell, in the event of an increase in the authorized capital stock of said corporation, all such increase in capital stock, upon the same terms and conditions as set forth in the said contract dated March 23, 1918, in connection with the then existing authorized capital stock of said corporation, which said contract was to provide and did provide, among other things, that at the time subscriptions for the agents, at least twenty-five per cent (25%) of the selling price of such capital stock of said corporation should be taken by said Baine for his stock should be collected in cash, and that promissory notes, payable to the said corporation, to become due not more than one year from the date of the subscription, might be taken for the balance of such subscription price, provided, however, that the said Baine should endeavor to secure as large a share of the said subscriptions in cash as possible, and the shortest possible maturing date on the said notes; that the said Baine would pay all the expenses of selling said stock, including compensation of salesmen and expense of providing and circulating sales literature and advertising, that the said Baine would devote his time to the sale of said stock until the same should be sold, and in the event of the acceptance by him of the sale of any stock of any increased capitalization of said corporation, that he would devote his time to the sale of such stock incident to such increased capitalization, and that as full compensation to the said Baine for the sale of said stock, the said corporation would pay him a sum equal to twenty per cent (20%) of the sale price of the stock sold by said Baine or his agents, which said twenty per cent was to be paid out of the initial payment received on such stock subscriptions;

That thereafter, on or about June 15, 1918, the exact date being to the Grand Jurors unknown, the defendants caused the said corporation to enter into a further agreement with the said Baine, which said agreement provided that in addition to the flat commission of twenty per cent (20%) provided for in the said contract dated March 23, 1918, for all stock of said corporation sold by said Baine to persons resident elsewhere than in the State of South Dakota, excepting also such stock as was specifically eliminated from the payment of such compensation in said contract of March 23, 1918, the said corporation should pay to said Baine an additional five per cent (5%) commission in cash for all sales of the said corporate stock so to be made by him under the terms of said contract, except that no cash commission should be paid for the resale of Two Hundred Twenty-five Thousand Dollars (\$225,000) of the capital stock of said corporation which had been re-purchased, and that the said Baine should receive only Four Thousand Dollars (\$4,000) in cash out of the proceeds of the sale of a certain one hundred sixty-five (165) shares of said stock, further details of the said 165 shares of said stock being to the Grand Jurors unknown;

That thereafter, on or about November 9, 1918, the said contract so made and caused to be made by the defendants between the said corporation and the said Baine, were sold, assigned and trans-

ferred, with all of the right, title and interest of the said Baine therein, to the said Tom G. Taylor & Company;

That it was further intended by the defendants as a part of the said scheme and artifice, that the said Baine and Taylor would, in pursuance of the contract hereinbefore mentioned, employ a large number of stock salesmen and agents to call upon persons to be solicited to purchase stock of said corporation for the purpose of creating confidence in the minds of such persons, hereinafter referred to as victims and prospective victims, of legitimate purposes and objects of the said corporation to erect and successfully operate at Sioux City, Iowa, a large packing plant, to be operated at a large profit for the benefit of the said victims, who would purchase the stock of said corporation, and it was intended that the said salesmen and agents would represent and pretend to such victims that the defendants were experienced manufacturers of meat products and well qualified to operate economically and at a large profit, a large packing plant at Sioux City, Iowa, which would result in large profits to the said victims; that the defendants intended that the capital stock of said corporation would be sold to such victims upon the promise and representation that it would pay seven per cent (7%) annual interest or dividends from the date of subscription on the amount thereof, and that the annual interest or dividend on the amount of such subscriptions would increase until the annual interest or dividends would amount to forty per cent (40%) of such subscriptions, and that the said seven per cent interest or dividends to be received on the stock so to be subscribed for by the said victims, would pay the interest of six per cent (6%) on the notes given by the said victims to the said corporation in pursuance of such subscriptions, leaving a margin of one per cent (1%) profit per annum thereon; that the said victims would not be called upon to pay notes so obtained and to be obtained, when due, as the increase in the value of the stock and the dividends to be received up to the time of the maturity of said notes, would be sufficient to take up the said notes given by said victims; that it would also be represented to such victims that at any time they were dissatisfied with their purchase of such stock obtained as aforesaid, that the same would be resold by the said corporation and that the said salesmen and agents, without loss to the victims and that the notes so to be obtained would be taken up and surrendered to them, and that the said victims would not be required to pay the same to the said corporation;

And the defendants intended to and did, as a further part of said scheme and artifice, insert large advertisements in various publications sent by and through the United States mails to a large number of farmers located in the States of Iowa, South Dakota, Nebraska and elsewhere, all of which were intended to reach and be read by the said victims, the purpose of said advertising being to induce the said victims to open up correspondence with the defendants and said corporation, in order that the stock of said corporation might be sold to them in the manner and upon the terms and conditions aforesaid:

That the defendants intended to and did, as a further part of said scheme and artifice to defraud, during the years 1918 and 1919, the

exact dates being to the Grand Jurors unknown, enter into pretended agreements with pretended subscribers for large blocks of the capital stock of said corporation, who would be persons of small or no financial worth and unable to purchase or pay for the stock so to be subscribed for by them, which said agreements would purport to show that the said pretended subscribers or purchasers of stock were to pay the par value thereof to the said corporation, the intent and purpose of the defendants being thereby to make it appear that such large blocks of the capital stock of said corporation had been sold to the said pretended purchasers, and to pay themselves, through said Baine and Taylor, large commissions out of the funds and property of said corporation for the pretended sale of said stock, when in truth and in fact, the defendants had agreed with such pretended subscribers that they would not be required to pay for or purchase the stock so subscribed for, and that they would not be called upon to pay any notes to be given therefor by them for such stock, but would receive a small quantity of stock of the said corporation for signing such stock subscriptions, which they would not be required to pay for, the object of the defendants being that said stock would be resold at One Hundred Twenty-five Dollars (\$125) or more per share, and that all money, bonds, notes and other things of value received and to be received upon the said stock so to be sold, in excess of the par value thereof, would be divided among the defendants and by them appropriated to their own personal use and not for the use or benefit of the said corporation; that the stock so to be resold under this said arrangement and scheme was to be and was subscribed for by victims on the regular subscription blanks of said corporation, and was to be and was represented by the defendants to be treasury stock of the said corporation;

That the said defendants intended, as a further part of the said scheme and artifice, to and did subscribe for large blocks of the capital stock of said corporation, at the par value thereof, with the intention of not paying for the said stock so subscribed for by them, and with the intention of reselling such stock for a price or sum in excess of the par value thereof, to victims, and to appropriate to and divide among themselves, all money, bonds, notes or other things of value that should be received in the resale of such stock in excess of the par value thereof; that the stock resold and to be resold [fol. 29] under this agreement was to be subscribed for on the regular subscription blanks of the said corporation and purport to be subscriptions for stock of said corporation, and was to be and was represented to the said victims as the treasury stock of the corporation.

That the said defendants intended to and did, as a further part of said scheme and artifice to defraud, pay dividends out of the proceeds of the sale of capital stock and out of funds of said corporation not earned by it as profits from the operation of its business, of seven per cent (7%) on preferred capital stock of said corporation at the expiration of one year after such stock was paid for by the said victims who purchased the same, and represented and pretended and caused it to be represented and pretended to the said victims that the divi-

dends so paid had been earned by said corporation and were the legitimate profits earned in the business of the said corporation, and the defendants issued and sent out and caused to be issued and sent out by mail, to the said victims, a form of dividend letter representing to and assuring the said victims that the said dividends so being paid were earned by and as the legitimate profits of said corporation, the object and intent of the defendants in sending out said letters in connection with the said dividends being to represent to and reassure the said victims that the said corporation was earning profits out of which dividends could legitimately be paid, and of the integrity and efficiency of the management and operation of the said corporation, and with the intention of assisting the said Taylor and the stock salesmen and agents employed by him in the sale of the stock of the said corporation, to sell more of the said stock to the said victims, and that soon after the payment of such dividends the said victims would be called on by the said Taylor and his stock salesmen and agents employed by him in sale of the stock of said corporation and be solicited to purchase additional stock in the said corporation on the faith of such dividends, it being further intended by the defendants that the said Taylor and his said stock salesmen and agents would represent to such victims that the stock of said corporation was valuable and was paying legitimate dividends of seven per cent (7%) per annum and would soon pay as high as forty per cent (40%) per annum;

That the defendants intended, as a further part of the said scheme and artifice to defraud, to represent and pretend to the said South Dakota State Securities Commission and others to the Grand Jurors unknown, for the purpose of deceiving and defrauding the said victims, and did with that intent and purpose, on or about the 8th day of April, 1919, and on or about the 22nd day of November, 1919, and at other times the exact dates being to the Grand Jurors unknown, make and cause to be made and sent to the said South Dakota State Securities Commission, through the United States mail, certain letters and documents, in and by which it was stated and represented, among other things, that every dollar's worth of material purchased by the plant of said corporation had been paid for in cash, that the plant would be operated for the making of legitimate profits, that dividends would be paid from the earnings, that the plant would be clear of encumbrance and would be kept so for the protection of thousands of investors in their preferred stock, that the said corporation was paying a guaranteed seven per cent (7%) dividend upon its stock out of the funds from profits derived from the purchase of products of other packers and the resale of the same, such statement, and representations being so made for the purpose of inducing said South Dakota State Securities Commission to continue in force the authority theretofore granted by it to the said corporation to sell its [fol. 30] capital stock within the State of South Dakota, and thus enable the defendants to cause the capital stock of said corporation to be sold to the said victims within the said State of South Dakota;

That each and all of the aforesaid statements, representations and promises, as the defendants and each of them then and there well

knew, would be and were false and fraudulent, and defendants did not, when said promises and representations were made, intend to carry out or perform the same and well knew that said corporation could not and would not carry out or perform the same, and the said defendants intended thereby to deceive and defraud the said corporation, and the said victims, and to induce the said victims to part with their money and property in the purchase of the said capital stock of the said corporation and in the subscriptions so obtained and to be obtained from the said victims for the said capital stock in said corporation, in the manner and by the means aforesaid.

And the said defendants, so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 1st day of April, 1920, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly, did cause to be delivered by mail by the postoffice establishment of the United States according to the direction thereon, at the town of Viborg and within the Division and District aforesaid, and within the jurisdiction of this court, a certain letter, dated at Sioux City, Iowa, and enclosed in an envelope and addressed and directed to Mr. Martin Christiansen, Viborg, S. D., R. No. 2, Box 74, and which said envelope then — there bore a return card as follows, to-wit:

Midland Packing Company. Midland Packing Co. Sioux City, Iowa, U. S. A.

and which said envelope and letter therein contained was by the said defendants lately before, to-wit: on the 31st day of March, 1920, placed and caused to be placed in the mails of the United States with an uncancelled two (2) cent postage stamp thereon, at the City of Sioux City, in the State of Iowa, for mailing and delivery, with the intent on the part of the defendants that said letter and said envelope should be carried by the mails of the United States and delivered to the said Martin Christiansen, one of the said victims, and the person to whom it was directed, according to the directions thereon, at the town of Viborg, State of South Dakota, and which said letter aforesaid was thereupon delivered by mail by the postoffice establishment of the United States according to the directions thereon, which said letter was as follows (omitting the pictures engraved on printed letterhead thereof), to-wit:

[fol. 31]

Count 1

Midland Packing Company

Midland Packing Co.

Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Prest. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

March 31st, 1920.

Mr. Martin Christiansen, Viborg, S. D.

DEAR MR. CHRISTIANSEN:

We have your favor of March 30th, and are very much pleased that you wrote us because the rumors which have reached you are entirely false.

The Midland Packing Company is not now in the hands of the receiver, has not been, and there is no possibility of it so being. We have neither sold to Swift & Co., have no such move in contemplation, and the attitude we have taken in connection with not killing for the past ten days has been based upon our judgment that no profits could be made by so doing.

It is unfortunate that we are compelled to follow our judgment in these matters rather than listen to the idle gossip of people who do not have any money invested. The financial condition of the Midland Packing Company has never been in as favorable a condition as it now is, and my warm personal regard for you is such that if I felt the slightest cause for alarm, I should advise you, and I am sure that if the people who gave the rumors would take as much time to investigate as they do to believe, they would find that it comes from the mouths of people whose judgment either financially or on a business question is of no value. Any statements made are of such a character that they are only made with a view of hurting us, and as I said before, without reference to how it may seem to outsiders, we shall be compelled to conduct the business of the plant along the lines which we conceive will make the most profit to stockholders, and whether it pleases or displeases those who have no interest, we do not expect to conduct the business when there are no profits to be gained.

I should be glad to see you at any time personally at the plant, and go over matters fully with you.

With cordial personal regards, I remain,

Yours very truly, Midland Packing Company. B. I. Salinger, Jr., Vice-President.

That at the time of the placing and causing to be placed the said letter in the post office of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dig-

nity of the United States, and contrary to the form of the statute of the same in such case made and provided.

[fol. 32]

Count 2

And the Grand Jurors aforesaid, on their oaths aforesaid, further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph on page sixteen beginning with the words "And the said defendants so having devised" and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 5th day of February, 1920, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly, did cause to be delivered by registered mail, by the postoffice establishment of the United States, according to the direction thereon, at the town of Lyonville and within the Division and District aforesaid and within the jurisdiction of this court, a certain registered letter, dated at Sioux City, Iowa, and enclosed in an envelope and addressed and directed to Mr. A. L. Will, Lyonville, via Kimball, S. D., and which said envelope then and there bore a return card as follows, to-wit:

Midland Packing Co., Sioux City, Iowa. Registered. C 2965. Register. Return Receipt Requested.

and which said envelope and letter therein contained was by the said defendants lately before, to-wit: on the 4th day of February, 1920, placed and caused to be placed in the mails of the United States with uncancelled postage stamps of the denomination as follows: one (1) ten (10) cent and two (2) two (2) cent postage stamps thereon at the City of Sioux City in the State of Iowa for mailing and delivery, with the intent on the part of the defendants that said letter and said envelope should be carried by the mails of the United States and delivered to the said A. L. Will, one of the said victims, and the person to whom it was directed, according to the directions thereon, at the town of Lyonville, State of South Dakota, and which said letter aforesaid was thereupon delivered by mail by the post office establishment of the United States according to the directions thereon, which said letter was as follows (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company

Midland Packing Co.

Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Prest. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

February 4th, 1920.

Mr. A. L. Will, Lyonville, Kimball, S. D.

DEAR SIR:

We are enclosing herewith stock certificate No. SD-85 for fifty shares of common stock, which you purchased from us, together [fol. 33] with a receipt for same which kindly sign and return to us in the stamped envelope attached.

As you no doubt know, the plant is now in operation and if you are in the city at any time, we trust we may have the pleasure of a visit from you and an opportunity of going over the entire project.

Very truly yours, Midland Packing Company. Fred C. Sawyer, President. FCS:HL.

that at the time of the placing and causing to be placed the said letter in the postoffice of the United States as aforesaid the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 3

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised" and continuing to the end of the first count.

And the said defendants so having devised and intending to devise as aforesaid, a scheme and artifice to defraud, did, on or about the 9th day of April, 1920, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly did cause to be delivered by mail by the post office establishment of the United States, according to the direction thereon, at the town of Armour and within the division and District aforesaid, and

within the jurisdiction of this court, a certain letter dated at Sioux City, Iowa, and enclosed in an envelope and addressed and directed to Mr. Frank Groesbeck, Armour, South Dakota, and which said envelope then and there bore a return card as follows, to-wit:

Midland Packing Company. Midland Packing Co. Sioux City, Iowa, U. S. A.

and which said envelope and letter therein contained was by the said defendants lately before, to-wit; on the 8th day of April, 1920, placed and caused to be placed in the mails of the United States with an uncanceled two (2) cent postage stamp thereon at the City of Sioux City, in the State of Iowa, for mailing and delivery, with the intent on the part of the defendants that said letter and said envelope should be carried by the mails of the United States and delivered to the said Frank Groesbeck, one of the said victims, and the person to whom it was directed, according to the directions [fol. 34] thereon, at the town of Armour, State of South Dakota, and which said letter was thereupon delivered by mail by the post office establishment of the United States according to the directions thereon, which said letter was as follows (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company
Midland Packing Co.
Capital \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice-Prest. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

Mr. Frank Groesbeck, Armour, South Dakota.

April 8th, 1920.

DEAR MR. GROESBECK:

Your letter of recent date, in which you make inquiry concerning your dividend has been referred to me for answer.

The fact that your stock has now been issued for one year, is evidence of your early faith in our institution and your belief that after we have commenced operation, that substantial profits might be made upon the investment. Because of the vast amount of money required in the operation of our plant, which is now enjoying a prosperous trade, and the fact that all of our money was needed for that purpose, has caused the Board of Directors to pass a resolution which is as follows:

"Whereas, guaranteed dividends have been paid to such stockholders as have accumulated upon stock issued for the past several months, and

Whereas, the plant is practically completed and ready for commencement of operation, and for the purposes of handling the dividends in compliance with the fiscal years of the company; be it

Resolved, that further dividends be accrued up to July 1st, 1920, and that upon that date all dividends accrued upon stock issued to that date shall become due and payable and that thereafter all dividends earned and accrued shall be payable from the office of the Secretary quarterly of each fiscal year, and the Secretary is hereby directed by this resolution to arrange his books in conformity to this resolution and pay dividends in compliance with this resolution of the Board of Directors."

This has been passed for the purpose of enabling us to use all our funds for the purposes mentioned and as business men and investors, I am sure that you will agree with me that it will be unwise to borrow money for operation, when the use of the money we have will bring us greater rates and under this rule all dividends will be paid quarterly and such dividends as may be due at this time and are not paid will accrue to you and will be paid at the quarterly period provided by the resolution.

We trust that you will agree with us in the wisdom of this decision and we ask your patience and judgment of the work that we are doing, because we feel confident that the prospects, based upon the [fol. 35] splendid business we have been enjoying since operation, will fully justify this action.

Very truly yours, Midland Packing Company. C. H. Burlingame, Treasurer. CHB:R. R.

That at the time of causing said letter to be delivered by mail of the United States according to the direction thereon the said defendants then well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 4

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised" and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 2nd day of May, 1920, in and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do unlawfully, feloniously and knowingly, did cause to be delivered by mail by the post office establishment of the United States, according to the direction thereon, at the town of Viborg, and within the Division and District aforesaid and within the jurisdiction of this court, a certain letter, dated at Sioux City, Iowa, and enclosed in an

envelope and addressed and directed to Martin Christiansen, Viborg, S. D., and which said envelope then and there bore a return card as follows, to-wit:

Midland Packing Company. Midland Packing Co. Sioux City, Iowa, U. S. A.

and which said envelope and letter therein contained was by the said defendants lately before, to-wit: on the 1st day of May, 1920, placed and caused to be placed in the mails of the United States with an un-cancelled two (2) cent postage stamp thereon, at the City of Sioux City, in the State of Iowa, for mailing and delivery, with the intent on the part of the defendants that said letter and said envelope should be carried by the mails of the United States and delivered to the said Martin Christiansen, one of the said victims and the person to whom it was directed, according to the directions thereon, at the town of Viborg, State of South Dakota, and which said letter aforesaid was thereupon delivered by mail by the post office establishment of the United States, according to the directions thereon, which said letter was as follows (omitting the pictures engraved on printed letterhead thereof), to-wit:

[fol. 36]

Midland Packing Company

Midland Packing Co.

Capital \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Prest. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

April 30th, 1920.

To all Stockholders:

We are enclosing the editorial page of the Sioux City Tribune for April 29th, 1920, calling your attention to the marked editorial. The saneness and candor of the views therein expressed, we believe, are beyond question. No bias or prejudice colors the statements and the writer merely voices his opinion of the sensible attitude that should be adopted by the stockholder.

In a business sense, the Midland Packing Company is a co-partnership, in which every stockholder is a partner. The future welfare of the Company and its reputation is a matter of vital concern to each subscriber to stock.

View the situation calmly. If you have matters that need adjustment, come to the stockholders' meeting that will be held in the near future and make known your troubles. If you have suspicions arising from the many false and malicious rumors, arrange at that time for an investigation. As a business proposition and in fairness to yourselves and the Company, try to preserve rather than destroy that which is yours.

Yours very truly, Midland Packing Company. Fred C. Sawyer, President. FCS.

That at the time of the placing and causing to be placed the said letter in the post office of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 5

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege, and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised" and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 28th day of April, 1920, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly did cause [fol. 37] to be delivered by mail, by the post office establishment of the United States, according to the directions thereon, at the town of Platte, and within the Division and District aforesaid, and within the jurisdiction of this court, a certain letter dated at Sioux City, Iowa, and enclosed in an envelope and addressed and directed to Mr. Thos. Mansheim, Platte, S. D., and which said envelope then and there bore a return card as follows, to-wit:

Midland Packing Company. Midland Packing Co. Sioux City, Iowa, U. S. A.

and which said envelope and letter therein contained was by the said defendants lately before, to-wit: on the 27th day of April, 1920, placed and caused to be placed in the mails of the United States, with two (2) uncancelled two (2) cent postage stamps thereon, at the City of Sioux City, in the State of Iowa, for mailing and delivery with the intent on the part of the defendants that said letter and said envelope should be carried by the mails of the United States and delivered to the said Thos. Mansheim, one of the said victims and the person to whom it was directed, according to the directions thereon, at the town of Platte, State of South Dakota, and which said letter aforesaid was thereupon delivered by mail by the postoffice establishment of the United States according to the directions thereon, which said letter was as follows, (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company, Sioux City, Iowa

Plant correspondence.

April 27th, 1920.

To all stockholders:

We take pleasure in enclosing a pamphlet which contains the by-laws of the Midland Packing Company. This pamphlet gives you information as to how the officers are elected, their powers and duties, how and when directors are elected, their terms of office, when and where meetings are held, as well as facts regarding the stock, its voting power and information regarding dividends and manner in which finances are handled.

We are also enclosing a pamphlet issued by the Sioux City Chamber of Commerce, which contains information and statistics about the different industries in and around Sioux City.

We call your special attention to the several references made to the Midland Packing Company, which will give you an idea what the business men of Sioux City think about the Midland Packing Company, in which you have invested your money. By special request the Chamber of Commerce have favored us by furnishing enough pamphlets to send one to each stockholder.

Both these pamphlets should be read very carefully, as they contain valuable information regarding the gigantic house in which you are financially interested, and its success depends greatly upon the co-operation of its stockholders.

Yours very truly, Midland Packing Company.

That at the time of the placing and causing to be placed the said letter in the post office of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose [fol. 38] of executing said scheme and artifice; Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 6

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby re-affirm, re-allege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised" and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did on or about the 21st day of June, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice, and attempting so to do, unlawfully, feloniously and knowingly, did

cause to be delivered by mail by the post office establishment of the United States, according to the direction thereon, at the town of Bridgewater, State of South Dakota, and within Division and District aforesaid, and within the jurisdiction of this court, a certain letter, to-wit: a letter directed to Mr. W. J. Shanard, Bridgewater, S. D., which said defendants then lately before, to-wit: on or about June 21st, 1919, placed and caused to be placed in the post-office of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said W. J. Shanard at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company, Packers, Sioux City, Iowa

Midland Packing Co.

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice-Pres. & Genl. Counsel; C. H. Burlingame, Secretary & Treasurer.

June 21, 1919.

Mr. W. J. Shanard, Bridgewater, S. D.

DEAR SIR:

Your ten shares of preferred stock purchased on the 21st day of June, 1918, entitled you to the 7% guaranteed dividend due and payable on the 21st day of June, 1919.

We are pleased to advise you that we have been fortunate enough to make sufficient legitimate profits to be able to pay you the dividend at this time, and we are enclosing you herewith check for \$70, of which kindly acknowledge receipt.

You were among the first purchasers of stock in the project, and despite war and labor conditions we hope to have the plant complete and running within less than a year's time from the commencement of actual building, an unprecedented accomplishment, we think, and we feel that the structure which is now nearing completion will be one of the finest packing houses in the Middle West. [fol. 39] We express the hope that you will call upon us when you are in Sioux City, and look over the investment, and we feel that if you do so you will feel the investment is one which has been justified, and that in the future you may hope for substantial returns upon your investment.

Yours very truly, Midland Packing Company. Fred C. Sawyer, President. FCS:t.

That at the time of the placing and causing to be placed the said letter in the post office of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice; Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 7

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set *set* forth in full, all of the allegations of the first count of this indictment except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count:

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did on or about the 24th day of October, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly, did cause to be delivered by mail by the postoffice establishment of the United States, according to the direction thereon, at the town of Viborg, State of South Dakota, and within the Division and District aforesaid, and within the jurisdiction of this court, a certain letter directed to Mr. Martin Christiansen, Viborg, S. D., which said defendants then lately before, to-wit: on October 23, 1919, placed and caused to be placed in the post office of the United States at Sioux City, Iowa, for delivery by the post office establishment of the United States to said Martin Christiansen at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company

Capital, \$8,000,000.00

Fred. C. Sawyer, President; B. I. Salinger, Jr., Vice Prest. & General Counsel; C. H. Burlingame, Secretary and Treasurer, Sioux City, Iowa, U. S. A.

October 23rd, 1919.

Mr. Martin Christiansen, Viborg, S. D.

DEAR SIR:

Referring to your sale of October 22nd, Mr. Spellings and Mr. Colby have advised us of this sale and of their promises made to you in connection with its resale, and this is to advise you that the company has been informed and thoroughly understands their [fol. 40] promises to you and that your note will not be sold or negotiated or used as collateral pending its life.

Very truly yours, Midland Packing Company. B. I. Salinger, Vice President and General Counsel. BIS-t.

That at the time of the placing and causing to be placed the said letter in the post office of the United States as aforesaid, the defend-

ants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 8

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 5th day of November, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly, did cause to be delivered by mail, by the postoffice establishment of the United States, according to the direction thereon, at the town of Centerville, State of South Dakota, and within the Division and District aforesaid and within the jurisdiction of this court, a certain letter, to-wit: a letter directed to Mr. P. C. Peterson, Centerville, S. D., which said defendants then lately before, to-wit, on November 4th, 1919, placed and caused to be placed in the post office of the United States at Sioux City, Iowa, for delivery by the post office establishment of the United States to said P. C. Peterson at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company

Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice-Prest. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

November 4th, 1919.

Mr. P. C. Peterson, Centerville, S. D.

DEAR SIR:

Messrs. Colby and Spellings have advised us of their arrangements with you, which we thoroughly understand. You may be assured that they will carry out their contract.

Yours very truly, Midland Packing Company. B. I. Salinger, Vice President and General Counsel. BIS-t.

[fol. 41] That at the time of the placing and causing to be placed the said letter in the post office of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 9

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment except these allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did on or about the 12th day of June, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly, did cause to be delivered by mail, by the postoffice establishment of the United States, according to the direction thereon, at the town of Vermilion, State of South Dakota, and within the division and District aforesaid, and within the jurisdiction of this court, a certain letter, to-wit: a letter directed to Mr. Theo. Ankor, Vermilion, S. D., which said defendants then lately before, to-wit: on June 11, 1919, placed and caused to be placed in the postoffice of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said Theo. Ankor, at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letter-head thereof), to-wit:

Midland Packing Company, Packers, Sioux City, Iowa

Midland Packing Co.

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice-Pres. & Genl. Counsel; C. H. Burlingame, Secretary & Treasurer.

June 11th, 1919.

Mr. Theo. Anker, Vermilion, S. D.

DEAR MR. ANKER:

Your twenty-five shares of preferred stock purchased on the eleventh day of June, 1918, entitle you to the 7% guaranteed dividend, due and payable on the eleventh day of June, 1919.

We are pleased to advise you that we have been fortunate enough to make sufficient legitimate profits to be able to pay you the divi-

dent at this time, and we are enclosing herewith check for \$175.00, for which kindly acknowledge receipt.

You were among the first purchasers of stock in the project, and despite war and labor conditions, we hope to have the plant complete and running within less than a year's time from the commencement of actual building, an unprecedented accomplishment, we think, and [fol. 42] we feel that the structure which is now nearing completion will be one of the finest packing houses in the Middle West. We express the hope that you will call upon us when in Sioux City and we feel that if you do so you will feel the investment is one which has been justified, and that in the future you may hope for substantial returns upon your investment.

Yours very truly, Midland Packing Company. Fred C. Sawyer, President. FCS/MP.

that at the time of the placing and causing to be placed in the said letter in the post office of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 10

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count;

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 23rd day of August, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice, and attempting so to do, unlawfully, feloniously and knowingly did cause to be delivered by mail, by the post office establishment of the United States, according to the direction thereon, at the town of Springfield, State of South Dakota, and within the Division and District aforesaid, and within the jurisdiction of this Court, a certain letter, to wit: a letter directed to Mr. Will Hartman, Springfield, S. D., which said defendants then lately before, to wit: on August 22nd, 1919, placed and caused to be placed in the postoffice of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said Will Hartman at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company

Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Pres. & General Counsel; C. E. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

August 22nd, 1919.

Mr. Will Hartman, Springfield, S. D.

DEAR MR. HARTMAN:

We enclose you herewith stock certificate, representing the stock which you recently purchased, together with a receipt for same, which kindly sign and return in the enclosed stamped envelope at your convenience.

[fol. 43] We are very glad indeed to number you among our stockholders, and we appreciate the assistance you have rendered our representative. We are pleased to advise you that the progress of the plant at this time is very gratifying to the officers of the Company, and we trust that if you are at any time in Sioux City we may have the pleasure of a visit with you, and an opportunity of going over the entire project.

Yours very truly, Midland Packing Company. Fred C. Sawyer, President. FCS/MP.

that at the time of the placing and causing to be placed the said letter in the postoffice of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice; Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 11

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count:

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 25th day of October, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly did cause to be delivered by mail by the postoffice establishment of the United States, according to the direction thereon, at the town of Kimball,

State of South Dakota, and within the Division and District aforesaid, and within the jurisdiction of this Court, a certain letter, to-wit: a letter directed to Mr. A. L. Will, Kimball, S. D., which said defendants then lately before, to-wit: on October 24th, 1919, placed and caused to be placed in the postoffice of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said A. L. Will at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company

Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Prest. & General Counsel; C. H. Burlingame, Secretary and Treasurer, Sioux City, Iowa, U. S. A.

October 24th, 1919.

Mr. A. L. Will, Kimball, S. D.

DEAR SIR:

We thank you for your prompt attention to the renewal of your note and acknowledge receipt of check for \$225.00 interest. [fol. 44] We enclose herewith your cancelled note and wish to assure you of our sincere appreciation of the confidence you have shown in our project. The plant is practically ready for operation and we feel that the future of the business is assured.

Yours very truly, Midland Packing Company. B. I. Salinger, Vice President and General Counsel. PLV/Me.

that at the time of the placing and causing to be placed the said letter in the postoffice of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 12

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count:

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the 7th day of January, 1920, in and for executing said scheme and

artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly did cause to be delivered by mail by the postoffice establishment of the United States, according to the direction thereon, at the town of Armour, State of South Dakota, and within the Division and District aforesaid, and within the jurisdiction of this Court, a certain letter, to-wit: a letter directed to Mr. Ardie C. Jensen, Armour, S. D., which said defendants then lately before, to-wit: on January 6th, 1920, placed and caused to be placed in the postoffice of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said Ardie C. Jensen at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Co.

Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Pres. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

January 6, 1920.

Mr. Ardie C. Jensen, Armour, S. D.

DEAR SIR:

Your note for \$1,000 will be due January 15th, with interest at [fol. 45] 6% from date. If you will advise us to what bank you wish your note sent for collection same will be promptly sent.

Yours very truly, Midland Packing Company. B. I. Salinger, Vice President and General Counsel. BIS-t.

that at the time of the placing and causing to be placed the said letter in the postoffice of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice: Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 13

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, re allege and incorporate as if herein set forth in full, all of the allegations of the first count of this indictment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count:

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about the

13th day of January, 1920, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly did cause to be delivered by mail by the postoffice establishment of the United States, according to the direction thereon at the town of Viborg, S. D., and within the Division and District aforesaid, and within the jurisdiction of this Court, a certain letter, to-wit: a letter directed to Mr. P. L. Peterson, Mr. Alfred Christianson, c/o H. E. Monk, Viborg, S. D., which said defendants then lately before, to-wit: on January 12th, 1920, placed and caused to be placed in the postoffice of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said P. L. Peterson and Mr. Alfred Christianson at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company
 Midland Packing Co.
 Capital, \$8,000,000.00

Fred C. Sawyer, President; B. I. Salinger, Jr. Vice Prest. & General Counsel; C. H. Burlingame, Secretary & Treasurer, Sioux City, Iowa, U. S. A.

January 12th, 1920.

Mr. P. L. Peterson, Mr. Alfred Christianson, c/o H. E. Monk, Viborg, S. D.

GENTLEMEN:

Mr. Colby has called to our attention the contract which he has entered into with you, and this letter is written to advise you that [fol. 46] the company is fully aware of the contract entered into and of the conditions of Mr. Colby's agreement with you.

Yours very truly, Midland Packing Company. B. I. Salinger, Jr., Vice President and General Counsel. T. BIS-t.

that at the time of the placing and causing to be placed the said letter in the postoffice of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice, against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Count 14

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That they do hereby reaffirm, reallege and incorporate as if herein set forth in full, all of the allegations of the first count of this indict-

ment, except those allegations contained in the last paragraph thereof, on page sixteen, beginning with the words "And the said defendants so having devised," and continuing to the end of the first count:

And the said defendants so having devised and intending to devise the aforesaid scheme and artifice to defraud, did, on or about June 21st, 1919, in and for executing said scheme and artifice and attempting so to do, and for the purpose and with the intention on their part of executing said scheme and artifice and attempting so to do, unlawfully, feloniously and knowingly did cause to be delivered by mail by the postoffice establishment of the United States, according to the direction thereon, at the town of Alester, State of South Dakota, and within the division and District aforesaid, and within the jurisdiction of this Court, a certain letter, to-wit: a letter directed to Mr. W. M. Rowley, Alester, S. D., which said defendants then lately before, to-wit: on June 20th, 1919, placed and caused to be placed in the postoffice of the United States at Sioux City, Iowa, for delivery by the postoffice establishment of the United States to said W. M. Rowley at said address, and which then was and is of the tenor following (omitting the pictures engraved on printed letterhead thereof), to-wit:

Midland Packing Company, Packers, Sioux City, Iowa

Midland Packing Co.

Fred C. Sawyer, President; B. I. Salinger, Jr., Vice Pres. & Genl. Counsel; C. H. Burlingame, Secretary & Treasurer.

June 20th, 1919.

Mr. W. M. Rowley, Alester, S. D.

DEAR SIR:

Your twenty shares of preferred stock purchased on the 24th day of June, 1918, entitle you to the 7% guaranteed dividend due and payable on the 24th day of June, 1919.

[fol. 47] We are pleased to advise you that we have been fortunate enough to make sufficient legitimate profits to be able to pay you the dividend at this time, and we are enclosing you herewith check for \$140.00, of which kindly acknowledge receipt.

You were among the first purchasers of stock in the project, and despite war and labor conditions we hope to have the plant complete and running within less than a year's time from the commencement of actual building, an unprecedented accomplishment, we think, and we feel that the structure which is now nearing completion will be one of the finest packing houses in the Middle West. We express the hope that you will call upon us when in Sioux City, and look over your investment, and we feel that if you do so you will feel the investment is one which has been justified, and that in the future you may hope for substantial returns upon your investment.

Yours very truly, Midland Packing Company, Fred C. Sawyer, President. FCS-t.

that at the time of the placing and causing to be placed the said letter in the postoffice of the United States as aforesaid, the defendants then and there well knew that said letter was for the purpose of executing said scheme and artifice; Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

S. Wesley Clark, United States Attorney for the District of South Dakota.

Names of witnesses sworn and examined before the Grand Jurors: Paul Miller, John P. Denahy, Humphrey Statter, R. M. Stokes, W. J. Shannard, Eunice McLaughlin, Mae Paulson, Martin Christensen, H. B. Martin, Mrs. Bob Thayer, W. Hughes.

(Endorsed:) No. 983 W. D.—United States District Court, District of So. Dak., Western Division.—The United States of America vs. Fred C. Sawyer, C. H. Burlingame and B. I. Salinger, Jr., Defendants.—Indictment Vol. Secl. 215 Penal Code—using the mails to defraud.—A true bill, Samuel W. Huntington, Foreman.—Filed in open Court this 20th day of May, A. D. 1922, Jerry Carleton, Clerk.

[fol. 48] UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

No. 17238

[Title omitted]

REPORT OF HEARING APRIL 20, 1923—Filed May 2, 1923

Proceedings had in the above entitled and numbered matter on hearing in open court before the Hon. Rufus E. Foster, Judge, on the 20th day of April, 1923

Appearances: St. Clair Adams, Esq., Attorney for the Petitioner; Louis P. Bryant, Esq., U. S. Asst. District Attorney, and S. W. Clark, Esq., District Attorney for the District of South Dakota, Representing the Respondent.

Mr. Bryant: The Government presents a motion praying for order for removal of B. I. Salinger, Jr., and submits herewith motion and order, together with commitment attached.

[fol. 49] We file also the return of the Marshal in the proceeding No. 17,233, entitled B. I. Salinger vs. Victor Loisel, and also the return of the Marshal in the proceeding No. 17,238, entitled B. I. Salinger Jr., versus Victor Loisel, also in response to writ of Certiorari, directed to United States Commissioner A. H. Browne.

Offer

Mr. Adams: Counsel for the relator offers in evidence certified copy of the indictment described in the writ, and, secondly, certified copy of an application for order of transfer to the District Court of the United States for the District of South Dakota, Western Division.

FRED C. SAWYER, sworn and examined as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Adams:

Q. What is your name?

A. Fred C. Sawyer.

Q. What is your business?

A. Manufacturer's agent.

Q. What is your address?

A. 1814 Mission Street, South Pasadena, California.

Q. Do you know Mr. C. H. Burlingame?

A. I do.

Q. Do you know Mr. B. I. Salinger, Jr.?

A. I do.

Q. Are you the Mr. Sawyer who is jointly indicted in the District Court of the United States for South Dakota?

A. I am.

Q. At what time or times, if any, were you physically present in the State of South Dakota between June 1st, 1919, and May 10, 1920?

A. I was not in Dakota during that period.

Q. You were not in South Dakota during that period of time?

A. No sir.

[fol. 50] No cross-examination.

C. H. BURLINGAME, sworn and examined as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Adams:

Q. What is your name?

A. C. H. Burlingame.

Q. What is your business?

A. I am employed by the California Bank, Los Angeles, in the position of manager.

Q. Do you know Mr. Fred C. Sawyer?

A. I do.

Q. Do you know Mr. B. I. Salinger, Jr.?

A. I do.

Q. Are you the C. H. Burlingame who is jointly indicted with these gentlemen in the District of South Dakota?

A. I am.

Q. At what time or times, if any, were you physically present in the state of South Dakota between June 1st, 1919, and May 10, 1920?

A. Not at all.

No cross-examination.

B. I. SALINGER, Jr., sworn and examined as a witness on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Adams:

Q. What is your name?

A. B. I. Salinger, Jr.

Q. You are the petitioner in these proceedings for a writ of habeas corpus, are you not?

A. I am.

Q. Where is your home, in what state is it located?

A. My home is in Sioux City, Iowa.

Q. Do you know Mr. C. H. Burlingame and Mr. Fred C. Sawyer who were just on the stand?

A. I do.

[fol. 51] Q. Are you the same B. I. Salinger, Jr., who is jointly indicted with those gentlemen in the United States District Court for South Dakota?

A. I am.

Q. At what time or times, if any, were you physically present in the State of South Dakota between June 1, 1919 and May 10, 1920?

A. None at all.

No cross-examination.

Mr. Adams: I suggest that we make the following agreement:

It is agreed that the testimony already taken on the present petition for writ of habeas corpus shall be used in the other case, No. 17,233, just as if the same were actually taken in that case, it being further understood, however, that this agreement shall not be considered to be a consolidation of the two cases. It is furthermore agreed that the testimony referred to above shall also be used and deemed to have been taken in the application of the *of the* government for warrant of removal.

Mr. Clark: It being understood, however, that the said removal proceedings are separate and distinct from the habeas corpus proceedings.

Mr. Adams: I can't make that agreement.

Testimony for the Government

T. L. GALBREATH, sworn and examined as a witness on behalf of the respondent, testified as follows:

Direct examination.

[fol. 52] By Mr. Bryant:

Q. What is your name?

A. T. L. Galbreath.

Q. You are United States Deputy Marshal here, are you not?

A. Yes, sir.

Q. Did you have occasion to see the plaintiff, Ben L. Salinger, Jr., on the 31st of March, 1923?

A. I don't remember the date, but it was on the date that Mr. Parsons brought him up to the Commissioner's office whatever date that was.

Q. State the circumstances in detail of this presentation of Salinger?

A. I answered a phone call this morning—

Objection

Mr. Adams: I object to this testimony. I can't see what probative value it can possibly have.

The Court: Whom did you receive the phone call from?

The Witness: The Clerk's office.

The Court: Well, omit all that. Just tell what took place when Salinger and Parsons came.

Q. Go ahead.

A. Well, Mr. Parsons came into the office with him, and I turned from my desk just as Mr. Parsons had spoken to some deputy in the office—

Objection

Mr. Adams: I object to anything he said to any deputy in the office.

A. —and I walked out and saluted Mr. Parsons as he was leaving the office. Mr. Salinger was left in the office in charge of—well, I really took Mr. Salinger in charge—he stayed in there a little while and brought him into the private office, into the office where I was working, to keep him from being interviewed or addressed by the newspaper people.

[fol. 53] Q. Well now, what, if anything, was said to you by Parsons on that occasion?

Objection

Mr. Adams: I object, if your Honor please. How can we be bound by anything the counsel for the surety company did?

The Court: Anything Mr. Parsons said in the presence of Mr. Salinger is admissible.

Cross-examination.

By Mr. Adams:

Q. As a matter of fact, you did have Mr. Salinger in custody, when he was detained in the private office of the Marshal, did you not?

A. Oh yes.

Q. Absolutely no doubt about that, is there?

A. We had him in there all right.

Q. And, further, there is no doubt about the fact you didn't release him until the habeas corpus was served?

A. No sir, I didn't.

Q. And until you saw a bond that had been approved by the United States District Judge?

A. Yes Sir.

Q. As a matter of fact, you came down to the Clerk's office and you examined yourself that bond before you permitted Mr. Salinger to leave your custody, did you not?

A. Not only examined the bond but read the order of the Court, and then I went to satisfy myself that that order of court had been strictly complied with before I let Mr. Salinger go.

Q. Prior to your being satisfied with this bond, you detained him under arrest, did you not and in your custody?

[fol. 54] Q. Well, from the first time we got sight of Mr. Salinger, why, in view of the fact that the office had been in communication with the United States Marshal and the United States District Attorney from Sioux Falls, why we would have kept Mr. Salinger.

Q. Like any other person?

A. We certainly would.

Q. And you did have him under detention until the writ of habeas corpus was allowed by the court and bond given, didn't you?

A. Yes sir.

By Mr. Bryant:

Q. When Salinger walked into the office, had you ever seen him before?

A. How is that?

Q. When Salinger then walked into the Marshal's office on the first occasion, had you ever seen him before?

A. No sir.

Q. Had you ever heard of Salinger before that first day that he was in your office, surrendered by Parsons?

Objection

Mr. Adams: I object to that "surrendered by Parsons."

The Court: I overrule the objection.

Mr. Adams: I reserve a bill.

Objection

Mr. Adams: I object to the whole question on the ground that there is nothing in your return or from what this witness has said to indicate that Salinger was surrendered to the Marshal.

Q. Did you ever see him before?

A. No sir.

A. Did you ever hear of him before? I am referring to this occasion that Salinger came into the office.

A. I don't think I ever heard of him before.

[fol. 55] Q. When was it you heard from the United States Attorney's office in Sioux City?

A. I would have to see that telegram to answer.

The Court: That has nothing to do with the case.

Offer

Mr. Clark: We offer in evidence bond, certified copy of bond given by B. I. Salinger, Jr., to the District Court of the United States for the District of South Dakota, at Des Moines, Iowa, on the 13th day of June, 1922, certified to by the clerk of the district court for the District of South Dakota.

Objection

Mr. Adams: Objected to on the ground it is foreign to any issue involved in these proceedings, and irrelevant.

The Court: I overrule the objection.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We next offer in evidence certified copy of the record before the Circuit Court of Appeals for the Second Judicial Circuit of the United States, certified to by the Clerk of that Court.

Objection

Mr. Adams: Objected to on the ground it is foreign to the issues of this case, and is irrelevant and res inter alios acta and without probative value here, because there can be no res judicata in matters

of habeas corpus, the petitioner having the right to apply to any judge for such writ, whether he has been denied that right on previous occasions by another judge or not.

The Court: I overrule the objection.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We next offer in evidence certified copy of an order of the District Court of the United States for the Southern District of [fol. 56] New York, in the matter of B. I. Salinger, Jr., petitioner for habeas corpus, showing proceedings had in that regard on the 16th day of March, 1923.

Objection

Mr. Adams: We make the same objection to that offer that we did to the entire record in the New York case, just as if we restated that objection here.

The Court: I overrule the objection.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We offer in evidence a certified copy transcript from the minutes of the District Court of the United States for the Southern District of New York, showing proceedings had in the matter of the removal of B. I. Salinger, Jr., from the Southern District of New York to the District of South Dakota, of date March 20, 1923.

Objection

Mr. Adams: Objected to on the same ground.

The Court: Objection overruled.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We offer in evidence certified copy of a bond given by B. S. Salinger, Jr., under the order of the District Court of the Southern District of New York, of date March 20, 1923, and conditioned for his appearance before the United States Court for the District of South Dakota for trial at the opening day of April, 1923 term.

Objection

Mr. Adams: Same objection, just as if restated.

The Court: Objection overruled.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We offer in evidence certified copy of the record of the District Court of the United States for the District of South Dakota [fol. 57] in the matter of the United States vs. Fred C. Sawyer, C. H. Burlingame and B. I. Salinger, Jr., showing proceedings had in that court in that cause on the 3rd and 4th days of April, 1923, and consisting of motion for forfeiture of the bond and issuance of bench warrants and the allowance thereof by the Court.

Objection

Mr. Adams: We object on the same ground. It is totally irrelevant to any issues here what transpired in the District of South Dakota when we were down here;

The Court: Objection overruled.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We offer in evidence certified copy of the bench warrant referred to in the minutes of *of* the Court for the District of South Dakota last received in evidence and which is attached to the Commissioner's return.

Objection

Mr. Adams: Same objection.

The Court: Objection overruled.

Mr. Adams: I reserve a bill.

Offer

Mr. Clark: We offer in evidence certified copy of the indictment referred to in the Commissioner's return to this court under the writ of certiorari and annexed thereto.

Mr. Adams: We have no objection to that, inasmuch as we have offered it ourselves.

Mr. Burns: Evidence closed on both sides.

[fol. 58] U. S. DISTRICT COURT, EASTERN DIST. OF LOUISIANA,
NEW ORLEANS DIVISION

[Title omitted]

PRÆCIPÉ FOR APPELLEE—Filed May 21, 1923

To the Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division.

SIR:

You will please incorporate in the transcript of appeal to the Supreme Court of the United States in the above numbered and entitled cause, the following:

- (1) Transcript of Record, United States Circuit Court of Appeals for the Second Circuit;
- (2) Bond given before the Clerk of the District Court of the United States for the Southern District of New York;
- (3) Certified copy of Order of United States District Court for the Southern District of New York;
- (4) Minutes of proceedings had in the United States Court for the District of South Dakota on April 23rd, 1923;
- (5) Bench warrant issued under seal of the United States District Court for the District of South Dakota.

Respectfully, For the U. S. Atty., (Signed) L. P. Bryant, Jr.,
Assistant U. S. Attorney.

[fol. 59] EXHIBIT IN EVIDENCE; TRANSCRIPT OF RECORD, UNITED STATES CIRCUIT COURT, SECOND CIRCUIT—Filed April 20, 1923

UNITED STATES CIRCUIT COURT FOR THE SECOND CIRCUIT

[Title omitted]

Appeal from Order Dismissing Writs of Habeas Corpus and Certiorari

Gilbert, Campbell & Barranco, Attorneys for Petitioner-Appellant,
No. 14 Wall Street, New York City.

William Hayward, U. S. Attorney, Attorney for Respondent, P. O.
Building, New York City.

[File endorsement omitted.]

[fol. 60 & 61] Index omitted in printing.

[fol. 62]

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because in the order, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between the United States of America, complainant, and B. I. Salinger, Jr., defendant, a manifest error hath happened to the great damage of the said B. I. Salinger, Jr., as is said and appears by his complaint. We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the Parties aforesaid in this behalf, Do command You, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 13th day December, 1922, with the order and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals, for the Second Circuit may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done

[fol. 62a] Witness the Honorable William H. Taft, Chief Justice of the United States, this 11th day of December, in the year of Our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-seventh.

Alex Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York
in the Second Circuit.

The foregoing writ is hereby allowed. J. W. Mack, U. S. District Judge. (Seal.)

[fol. 63] At a Criminal Term of the United States District Court Held in and for the Southern District of New York, at the Court-house Thereof, in the Borough of Manhattan, New York City, on the 11th Day of December, 1922.

Present: Hon. John C. Knox, Judge.

[Title omitted]

**ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS
AND TO FILE PRINTED RECORD**

A motion having been made by the petitioner B. I. Salinger, Jr., on the 11th day of December, 1922, for an order extending the time of the said petitioner to settle and file a bill of exceptions herein to and including the 13th day of January, 1923, and to extend the time of the said petitioner to file his printed record on appeal with the Clerk of the United States Circuit Court of Appeals for the Second Circuit up to and including the said 13th day of January, 1923, and the said motion having duly come on before me to be heard on the said 11th day of December, 1922,

Now after hearing William P. McCool, of counsel for the Petitioner in support of said motion and Maxwell S. Mattuck, Assistant United States Attorney, in opposition thereto, and due deliberation having been had thereon, it is

[fol. 64] Ordered, that the time for the petitioner B. I. Salinger, Jr., to settle and file the bill of exceptions in the appeal herein be and the same hereby is extended ten days from the 12th day of December, 1922, to wit, up to and including the 22nd day of December, 1922; and it is further

Ordered, that the time of the petitioner B. I. Salinger, Jr., to file the printed record on appeal herein in the Circuit Court of Appeals, for the Second Circuit, be and the same hereby is extended ten days from December 13th, 1922, to wit, up to and including the 22nd day of December, 1922.

Jno. C. Knox, U. S. D. J.

[fol. 65] At a Criminal Term of the United States District Court Held in and for the Southern District of New York, at the Court-house Thereof, in the Borough of Manhattan, New York, City, on the 22nd Day of December, 1922.

Present: Hon. John C. Knox, Judge.

[Title omitted]

**ORDER EXTENDING TIME TO SETTLE AND FILE BILL OF EXCEPTIONS
AND TO FILE PRINTED RECORD**

A motion having been duly made by petitioner, B. I. Salinger, Jr., on the 22nd day of December 1922 for an order extending the time of

the said petitioner to settle and file bill of exceptions herein up to and including the 27th day of December, 1922, and extending the time of said petitioner to file the printed record on appeal with the Clerk of the United States Circuit Court of Appeals for the Second Circuit up to and including the 27th day of December, 1922, and said motion having duly come on before me to be heard on the said 22nd day of December, 1922,

Now, therefore, after hearing William P. McCool, of counsel, for petitioner, in support of said motion, and Maxwell S. Mattuck, Assistant United States Attorney in opposition thereto, and due deliberation having been had thereon, it is

[fol. 66] Ordered, that the time of petitioner B. I. Salinger, Jr., to settle and file the bill of exceptions in the appeal herein be and the same hereby is extended up to and including the 27th day of December, 1922: and it is further

Ordered, that the time of petitioner B. I. Salinger, Jr., to file the printed record on appeal herein in the Circuit Court of Appeal for the Second Circuit be and the same hereby is extended up to and including the 27th day of December, 1922.

Jno. C. Knox, U. S. D. J.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

BILL OF EXCEPTIONS

Be it remembered, that on the trial of this cause in this Court, at the November, A. D. 1922 term, the Honorable Julian W. Mack, Circuit Judge, presiding, the following proceedings were had and none others, to-wit:

[fol. 67] The petitioner, B. I. Salinger, Jr., presented to the Court writs of habeas corpus and certiorari, granted on the 8th day of November, 1922, together with his petition verified on the 8th day of November, 1922, upon which said writs were granted.

Return to the writ of habeas corpus was made by William C. Hecht, United States Marshal.

Return to the writ of certiorari was made by Hon. Samuel M. Hitchcock, United States Commissioner.

True copies of said writs, petition and returns are annexed hereto and made part of this Bill of exceptions.

A hearing was had before the Court thereon, on the 13th day of November, 1922.

No evidence was introduced upon said hearing.

Upon said hearing the Court granted petitioner's motion to amend all papers and proceedings herein so as to correct the spelling of the name of petitioner to "Salinger"; to which the Government took no exception.

The Court also granted petitioner's motion to amend the petition herein so as — allege that the indictment admitted in evidence by the Commissioner was wholly invalid and the Grand Jury had no power to return the same nor the Commissioner power to take any action founded thereon, for the further reason that said indictment was returned by a Grand Jury sitting for the Western Division of the District of South Dakota, whereas certain members of said Grand Jury did not reside within said Western Division but were [fol. 68] drawn from other Divisions of said District. The Government thereupon conceded that the said Grand Jury was in fact drawn from the entire District of South Dakota and not from the Western Division of said District alone, and took no exception to the granting of petitioner's said motion.

At the conclusion of the argument, petitioner requested an opportunity to present a written brief upon the questions raised by him, which application was denied by the Court; to which ruling the petitioner by his counsel, then and there duly excepted.

At the conclusion of the hearing the Court directed that the said writs of habeas Corpus and certiorari heretofore granted herein be dismissed and that the petitioner be remanded to the custody of William C. Hecht, United States Marshal for the Southern District of New York, pending his removal to the demanding District; to which ruling of the Court the petitioner by his counsel, then and there duly excepted, and then and there announced in open Court that he would appeal from such ruling and determination to the Circuit Court of Appeals for the Second Circuit and duly saved his exceptions.

The Court directed that a formal order be prepared and entered upon its decision dismissing said writs over the exception of petitioner to which ruling, and the entry of which order, the petitioner, by his counsel, then and there duly excepted. Pursuant to said direction of the Court said formal order was entered on the 15th day of November, 1922.

After the conclusion of said hearing and on November 14th 1922, William C. Hecht, United States Marshal. Presented to the Court a further return to the writ of habeas corpus, verified November 14th 1922.

[fol. 69] In furtherance of justice and that right may be done, the Said B. I. Salinger, Jr., petitioner, tenders and presents the foregoing (together with the documents and exhibits referred to herein and made part hereof) as his bill of exceptions to the action of the Court, and prays that the same may be settled and allowed and signed and sealed by the Court and made part of the record and the same is accordingly done, this 27th day of December, A. D. 1922.

By the Court: (Signed) Julian W. Mack, Judge.

[fol. 70] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

WRIT OF HABEAS CORPUS

The President of the United States to Honorable William C. Hecht, United States Marshal, Greeting:

We command you, That you have the body of B. I. Salinger, Jr., by you imprisoned and obtained, as it is said together with the time and cause of such imprisonment and detention by whatsoever name said B. I. Salinger, Jr., shall be called or charged before me or the Judge presiding at a Criminal Term of this Court to be held in and for the Southern District of New York at the Court House thereof, Old Post Office Building Borough of Manhattan, New York City, on the 13th day of November, 1922 at ten thirty o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning him, and have you then there this writ.

Witness, Honorable Learned Hand, a Judge of the District Court of the United States, the 8th day of November, one thousand nine hundred and twenty-two.

Alex Gilchrist, Clerk. (United States Seal of the Court of the Southern District.) Gilbert, Campbell & Barranco, Attorneys.

Writ allowed bond in the sum of \$10,000. J. W. M., C. J.

[fol. 71] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

WRIT OF CERTIORARI

The President of the United States to Hon. Samuel M. Hitchcock, a Commissioner of the United States, Greeting:

Commands you, that you certify fully and at large to United States District Court, Southern District of New York, Criminal Division, Criminal Term at the Court House thereof, Old Post Office Building, Manhattan, New York City, on the 13th day of November, 1922, at 10:30 A. M. the day and cause of the imprisonment of B. I. Salinger, Jr., by you detained; as is said by whatsoever name the said B. I. Salinger, Jr., shall be called or charged; and have you then this writ.

Witness Hon. Learned Hand, a Judge of the United States District Court, the 8th day of November 1922.

Alex. Gilchrist, Clerk. (Seal of the United States for Southern District Court.) Gilbert, Campbell & Barranco, Attorneys.

Writ allowed. J. W. M., C. J.

[fol.72] IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION FOR WRITS OF HABEAS CORPUS AND CERTIORARI
—Filed Nov. 8, 1922

The petition of B. I. Salinger, Jr., of Sioux City, State of Iowa, respectfully shows to this Court:

That your petitioner is unjustly and unlawfully detained and restrained of his liberty by, and in the Custody of William C. Hecht, the Marshal of the Southern District of New York.

That your petitioner is not detained and restrained by virtue of any final judgment of any Court of competent jurisdiction of any State.

That to the best of the knowledge, information and belief of your petitioner the pretense for his detention is that said Marshal claims the right to hold said petitioner and imprison him by virtue of a certain Warrant of Commitment issued under the circumstances hereinabove related.

That your petitioner is and for many years has been a resident and citizen of the United States and of the State of Iowa.

[fol. 73] That on or about May 20, 1922, your petitioner is informed, the Grand Jury of the United States District Court, for the Western Division of the District of South Dakota returned to said Court a certain indictment wherein and whereby, the said Grand Jury charged that your petitioner and certain other parties named in said indictment were guilty of a violation of Section 215 of the Penal Code of the United States; that as the sole basis for said charge, as your petitioner is informed and believes it was alleged that said defendants had placed in the Post Office of the United States at Sioux City, Iowa, certain letters in consummation of a scheme and artifice to defraud certain persons denominated in said indictment as "the victims."

That on or about the 21st day of October, 1922, your petitioner was arrested by the Marshall of the Southern District of New York. At your deponent is informed and believes that he was arrested pursuant to a warrant which had theretofore been issued by Hon. Emanuel M. Hitcheock, United States Commissioner, upon the affidavit of complaint of Maxwell S. Mattuck, Esq., Assistant United States Attorney for the Southern District of New York said complaint charging in effect that your petitioner was under the indictment aforesaid mentioned and was fugitive from justice.

That thereupon and on the same day, your petitioner was taken before the said United States Commissioner by said Marshal pursuant to said warrant, and then and there was admitted to bail in the sum of One Thousand (\$1,000) Dollars, and the matter set down for a hearing for the 8th day of November, 1922.

[fol. 74] That on said 8th day of November, 1922 a hearing was had before the said United States Commissioner, and the said Commissioner thereupon summarily found that there existed probable cause to believe that this petitioner was guilty of the charge against him, and thereupon the said Commissioner cancelled the bail of said petitioner and committed the said petitioner to the custody of the said Marshal with directions that said petitioner be imprisoned and detained by the said Marshal until a warrant should issue by a Judge of the Southern District of New York, directing the removal of your petitioner from said Southern District of New York to the District of South Dakota, and thereupon a Warrant of Commitment for said custody was issued by said United States Commissioner and placed in the hands of the said Marshal; that thereupon the said Marshal arrested your petitioner and placed him in custody and restrained him of his liberty and detained him, and does still so imprison and detain your petitioner.

That upon the said hearing had before the said Commissioner, the only evidence introduced against the said petitioner was the complaint of said Assistant United States Attorney Mattuck hereinbefore referred to together with a certified copy of the indictment returned in the United States District Court for the Western Division of the District of South Dakota. The identity of the person charged in the complaint and indictment with your petitioner was admitted.

That your petitioner duly objected to the admissibility of said complaint and indictment as evidence to show probable cause for believing the defendant guilty of any offense against the United States, and particularly of having committed any offense, and especially the offense charged, within the territorial limits of the Western Division of the District of South Dakota, or within any Division of the District of South Dakota, and your petitioner urged that said indictment and complaint upon its face failed to show or allege that any crime or offense had been committed by your petitioner and especially that any crime or offense had been committed within the territorial limits and jurisdiction of the District of South Dakota, or in any Division thereof, and particularly in the Western Division thereof, and particularly for the following reasons:

I. That said indictment and each and every count thereof failed to state facts sufficient to charge this petitioner or any of the defendants therein named with any crime or offense against the United States or any law thereof, and failed to describe any crime or offense in violation of or punishable under any of the laws of the United States.

II. That said indictment and each and every count thereof failed to state facts sufficient to charge the petitioner or any of the defendants therein named with the commission of any crime or offense against the United States or any law thereof within the District of South Dakota or any Division thereof.

III. That said indictment and each and every count thereof failed to state facts sufficient to charge petitioner or any of the defendants

therein named with the commission of any crime or offense against [fol. 76] the United States or any law thereof within the Western Division of the District of South Dakota.

IV. That if any offense against the laws of the United States be charged at all, and your petitioner says that no such offense is so charged, that such facts as are charged show that no offense was committed by your petitioner or any or all of the defendants named in said indictment within the District of South Dakota or any Division thereof and that therefor said indictment and any proceedings thereunder, and especially any trial, are and would be in violation of the rights of petitioner under the Fifth and Sixth Amendment- of the Constitution of the United States, and of his rights under Section Three of Article Three thereof.

V. That petitioner protested that said indictment does not charge any offense at all, and if any, none within the jurisdiction of the Court to which said indictment was returned, and says that in any event such offense as may be found to be charged in the indictment is charged to have been committed at least according to the conclusion of the pleader, in the Southern Division of South Dakota, whereas the indictment was returned at and by a Grand Jury sitting in and for the Western Division of South Dakota.

VI. Petitioner further says that by reason of the provisions of Section 53 of the Judicial Code of the United States said Grand Jury was entirely without power or authority to return said indictment, and said Court was without power or authority to receive it, and that this Court is now, for like reasons without power or jurisdiction to take any proceedings under said invalid indictment, and particularly, to arrest or detain or imprison your petitioner, upon any warrant issued that is founded upon said indictment, and particularly without power or jurisdiction to direct the removal of your petitioner to the District of South Dakota, and in any event, has no power to direct the return of your petitioner to the Southern Division of the District of South Dakota, wherein no indictment has been found against your petitioner.

VII. Subjects to grounds "I, II, III, IV, V and VI" hereof petitioner further states that evidence presented before the said Grand Jury as to all the counts contained in said indictment except Counts 1, 4 and 6 thereof, was insufficient to sustain the indictment for the reasons among others, that no person called as a witness before said Grand Jury had any personal knowledge of whether the letters relied upon in said counts had ever been mailed by petitioner or any of the defendants named, or whether said letters had ever been carried by mail or whether they had been delivered to the addresses thereof by mail and the said letters bearing no evidence of where they had been mailed or delivered, said counts of the indictment were based on the incompetent and hearsay testimony of some or all of the persons whose names are endorsed on the indictment as witnesses before said Grand Jury.

VIII. That said indictment and each and every count thereof is void as being based on incompetent and hearsay testimony, and particularly because at the hearing before the Grand Jury there was [fol. 78] introduced and used certain books, and the legal custodian of said books although subpoenaed to appear before and actually in attendance upon said Grand Jury to testify to the identity and custody of said records, was not called as a witness and did not lay the foundation for the introduction or use thereof, and your petitioner in support of grounds "VII and VIII" hereof presents the affidavits of Charles H. Rathburn and Samuel W. Huntington, members of the Grand Jury that found said indictment.

IX. That subject to grounds "I, II, III, IV, V and VI" hereof petitioner says that said indictment and each and every count thereof is duplicitous and not sufficiently specific, is repugnant, too vague, indefinite, ambiguous and uncertain to charge any facts sufficient to constitute any crime or offense, and fail to inform petitioner or the other defendants of the charge against him or them or make the same clear to the common understanding.

X. Subject to grounds "I, II, III, IV, V and VI" hereof, petitioner says that the indictment as a whole is needlessly long and involved and contains much redundant and immaterial allegations, which defects when taken together render it difficult to construe and almost unintelligible; and it so lacks certainty of averment that petitioner ought not to be compelled to respond thereto.

XI. Subject to all of the foregoing grounds the petitioner says that the indictment attempts to charge a scheme by means of fraudulent pretenses, representations and promises, and with the intent to [fol. 79] defraud, to obtain from the persons styled in the indictment as victims certain of their moneys and property by means of inducing them to part with their said property in exchange for shares of stock of the Midland Corporation; said indictment further attempts to charge that the defendants each and all including your petitioner used the Post Office establishment in the United States to transmit to said victims in alleged execution of said scheme the letters sent out in the indictment and petitioner avers that it appears on the face of said indictment that none of said letters was in execution of said alleged scheme, but that said letters showed on their face that when they were written they and each of them referred to acts or things then completed and finished and executed, and therefore incapable of being further executed; and it appears on the face of the indictment that none of said letters made any effort to obtain anything from anyone, nor is it charged that anything was obtained from anyone.

XII. Subject to all of the foregoing grounds, petitioner further says that although the indictment charges nothing but a scheme by such fraudulent means and devices to obtain money and property, and that this was done with intent to defraud, still the indictment nowhere charges that *if* anything was obtained from said victims,

nor does it contain anything to show that the shares of stock of the said Midland Corporation therein referred to were not of the fair and reasonable value of the consideration paid therefor, and particularly [fol. 80] fails to — that anyone whosoever was in fact defrauded by your petitioner or by any of the defendants, whether by means of the said letters or otherwise.

Your petitioner further says that the said commissioner overruled his objections to which petitioner saved his exceptions, and your petitioner now urges the said objections to this Court in support of this petition for writs of habeas corpus and certiorari with the same force and effect as if herein again set forth at length, and urges that the ruling of said commissioner was erroneous.

Your petitioner further says that he offered evidence before said commissioner to prove that he was not guilty in fact of the matters and things charged in said complaint and indictment against him, and that there was no probable cause for believing him guilty of the charge, and also offered evidence to prove that the matters and things alleged in said complaint and indictment did not happen or occur or arise within the District of South Dakota, and particularly within the Western Division thereof, and that the said United States Court within said district had no jurisdiction of the offense; that said commissioner ruled that he could not receive such evidence and refused to hear or consider the same.

Your petitioner further says that the letters complained of concern the affairs of the Midland Packing Company, a corporation organized under the laws of Iowa, and having its plant, offices and records at Sioux City, Iowa, where the said letters are alleged to have been mailed: that a great majority of the stock was sold in Iowa; it is well known in said State that the money derived from the [fol. 81] sale of the stock was honestly administered. That is, your petitioner is informed and believes, prior to the time of the *of the* proceedings in South Dakota which culminated in the indictment now under review, the following matters set forth in said indictment were fully investigated first by the Post Office Authorities and later by the United States Attorney for the District of Iowa, for the Purpose of ascertaining if there existed probable cause to believe that a crime had been committed; that after such investigation had as aforesaid in Iowa the United States Attorney refused to present the Matter to the Grand Jury for the District of Iowa. That at the same time that the indictment was found in South Dakota, as your petitioner is informed and believes, the Grand Jury for the District of Iowa was in session at Sioux City, Iowa, for the hearing of presentments, and no presentment was made to said Grand Jury against your petitioner.

All of the witnesses who appeared before the Grand Jury in South Dakota, as your petitioner is informed and believes were brought into the said jurisdiction from Sioux City Iowa for the express purpose of testifying. The alleged indictment therefore was found in wholly foreign jurisdiction far distant from the home City of your petitioner. That your petitioner was never in the State of

South Dakota at the time that the acts complained of in the indictment are alleged to have been committed.

By reason of the foregoing your petitioner respectfully urges that he is unlawfully detained and restrained of his liberty, and he prays that writs of habeas corpus and certiorari may issue in his behalf, directed to the Marshal of the Southern District of New York, [fol. 82] requiring said Marshal to bring your petitioner before this Court forthwith and to discharge your petitioner from custody.

That no previous application for such writs has been made.

B. I. Salinger, Jr.

Affidavit of B. I. Salinger, Jr., to above paper omitted in printing.

[fol. 83]

EXHIBIT "A" TO PETITION

DISTRICT COURT OF THE UNITED STATES, WESTERN DIVISION, DISTRICT OF SOUTH DAKOTA

M. 7—356

UNITED STATES OF AMERICA, Plaintiff,
against

FRED C. SAWYER, C. H. BURLINGAME, and B. I. SALINGER, JR.,
Defendants

Affidavit of Charles L. Rathbun Annexed to Petition

DISTRICT OF SOUTH DAKOTA,
County of Brown:

STATE OF SOUTH DAKOTA, ss:

Charles L. Rathbun, being first duly sworn according to law, deposes and says, that he was summoned to serve as a grand juror at Deadwood in the May, 1922, term of Court and appeared and served thereon at said term of court during which term the above entitled case was presented to said grand jury. That he remembers that three young ladies whose names he does not now recollect, appeared and testified before said grand jury, stating that they were stenographers of said defendants when certain letters were written by defendants and mailed or placed in the mail chute to be sent out through the United States mail; that W. J. Shanard of Bridgewater, [fol. 84] South Dakota, appeared and testified in regard to a letter that he claimed to have received from defendants through the United States Mail; that Martin Christianson of Viborg, South Dakota, appeared and testified that he had received certain letters from the defendants through the United States mail at Viborg, South Dakota; that a post office inspector, I think by the name of Hughes,

appeared and testified in regard to the letters which he produced and as I believe described in the indictment that there were certain documents and papers produced by the United States Attorney and offered to the inspector besides said letters and as I believe documents from South Dakota State Securities Commission that said papers were not identified by any witness except said Hughes; that no officer of the State Securities Commission appeared to testify to the genuineness and identity of those papers from the State Securities Commission; that to the best of my recollection now, no other recipients of letters described in the indictment testified before the grand jury except the two persons that I have mentioned, Mr. Christianson and Mr. Shanard; the post office inspector might have testified about the other letters described in the indictment but I am not positive as to each letter.

C. L. Rathbun.

Subscribed and sworn to before me this 28th day of September, 1922. F. G. Huntington, Notary Public. (Notarial Seal.)

[fol. 85]

EXHIBIT B TO PETITION

IN THE DISTRICT COURT OF THE UNITED STATES, WESTERN DIVISION,
DISTRICT OF SOUTH DAKOTA

M. 7—356

UNITED STATES OF AMERICA, Plaintiff,
against

FRED C. SAWYER, C. H. BURLINGAME, and B. I. SALINGER, JR.,
Defendants

Affidavit of Samuel W. Huntington Annexed to Petition

District of South Dakota

STATE OF SOUTH DAKOTA,
County of Brown, ss: .

Samuel W. Huntington, being first duly sworn according to law, deposes and says, that he was summoned to serve as a grand juror at Deadwood in the May, 1922, term of Court and appeared and served thereon at said term of Court during which term the above entitled case was presented to the grand jury. That he remembers that three young ladies whose names he does not now recollect appeared and testified before said grand jury, stating that they were stenographers of said defendants when certain letters were written by defendants and mailed or placed in the mail chute to be sent out through the United States Mail; that a party whose name is W. J. Shanard of

Bridgewater, South Dakota, to the best recollection of affiant, ap- [fol. 86] peared and testified in regard to a letter which he claimed to have received from defendants through United States Mail; that a party whose name is Martin Christianson of Viborg, South Dakota, appeared and testified that he had received certain letters from defendants through United States mail at Viborg, South Dakota; that a post office inspector, affiant thinks by the name of Hughes appeared and testified in regard to letters which he produced and as affiant believes were described in the indictment that there were certain documents and papers produced by the United States Attorney and offered to the inspector besides said letters and affiant believes that documents from the South Dakota States Securities Commission; that said papers were not identified by any witness except the aforesaid inspector whose name affiant recalls as Hughes; that to the best of affiant's^{ss} Knowledge and belief no officer of the State Securities Commission appeared to testify to the genuineness and identity of those papers from the State Securities Commission; that to the best of affiant's recollection now no other recipients of letters described in the indictment testified before the grand jury save the two persons mentioned Christianson and Shanard; that the post office inspector may have testified about the letters other than the two Christianson and Shanard described in the indictment but as to that affiant is unable to state positively.

S. W. Huntington.

Subscribed and sworn to before me this 28th day of September, 1922. F. G. Huntington, Notary Public, State of South Dakota. (Notarial Seal.)

[fol. 87] UNITED STATES OF AMERICA,
District of South Dakota, ss:

CLERK'S CERTIFICATE

I, Jerry Carleton, Clerk of the District Court of the United States of America in and for the District of South Dakota do hereby certify that on the 17th day of October, A. D. 1922, there was filed in the above entitled Court, on behalf of the defendant, Fred C. Sawyer in the Case of the United States, Plaintiff, vs. Fred C. Sawyer, C. H. Burlingame and B. I. Salinger, Jr., Defendants, Motion to Quash Indictment, that attached to and made a part of said Motion to Quash Indictment is the affidavit of Charles L. Rathbun marked Exhibit "A" and also the affidavit of S. W. Huntington marked Exhibit "B" that I have compared the foregoing copy of said affidavits with the originals thereof, which are in my custody as such clerk, and that such copy is a correct transcript from such originals.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Sioux Falls, in said District this 4th day of November, A. D. 1922.

Jerry Carleton, Clerk, By C. C. Schwarz, Deputy.

[File endorsement omitted.]

fol. 88] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS

SOUTHERN DISTRICT OF NEW YORK, ss:

William C. Hecht, being duly sworn, deposes and says that he is the Marshal of the United States for the Southern District of New York and on his oath makes this return to the writ of habeas corpus allowed herein on November 8, 1922, producing in Court the body of B. I. Salinger mentioned in the said writ, and for a further return to said writ alleges as follows:

1. Upon information and belief that May 20, 1922, the grand jurors of the United States of America for the District of South Dakota did present to the United States District Court for the said district an indictment against the said B. I. Salinger, a copy whereof hereto annexed marked "Exhibit A," and which said indictment is hereby made part hereof with the same force and effect as if the said indictment were here set forth in full.

fol. 89] 2. That thereafter, upon information and belief, on October 21, 1922, the United States Commissioner sitting in and for the Southern District of New York did issue his warrant directed to your respondent commanding him in the name of the President of the United States of America to apprehend the said B. I. Salinger, who was then and there in the Southern District of New York, and to bring the said Salinger before him, the said Commissioner, at the Post Office Building in the City of New York, to answer to a complaint praying for the removal of the said Salinger to the said District of South Dakota to answer to the indictment aforesaid.

3. That thereafter the respondent duly apprehended the said Salinger within the Southern District of New York.

4. That thereafter on the 15th day of November, 1922, the relator having been arraigned before the said United States Commissioner, was heard in opposition to the said prayer for removal, and at the conclusion of the said hearing the said Commissioner committed the said relator to the custody of your respondent to await an order for the removal of the said Salinger to the said District of South Dakota, there

to await trial, and the said relator was taken into custody by your respondent.

The sources of your deponent's information and the grounds of his belief as to the facts hereinbefore alleged are the records of the United States Commissioner for the Southern District of New York.

Wherefore, deponent prays that the writ of habeas corpus herein may be dismissed and that the said B. I. Salinger be remanded to the custody of the respondent to be dealt with according to law.

William C. Hecht

Sworn to before me this 11th day of November, 1922. Henry Straus, Notary Public, N. Y. Co. Clerk's No. 854. (Seal.)

[fol. 90] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

FURTHER RETURN TO WRIT OF HABEAS CORPUS

SOUTHERN DISTRICT OF NEW YORK, ss:

William C. Hecht, being duly sworn, deposes and says that he is the Marshal of the United States for the Southern District of New York and on his oath makes this return to the writ of habeas corpus allowed herein on November 8, 1922, producing in Court the body of B. I. Salinger mentioned in the said writ, and for a further return to the said writ

1. Denies on information and belief the allegations contained in folio 23 of Paragraph XII of the petition herein and more particularly that allegation in the said petition, that the said Commissioner ruled that he could not receive the evidence offered by the said relator and that the Commissioner refused to hear and consider the same.

William C. Hecht

Sworn to before me this 14th day of November, 1922. Henry Straus, Notary Public, N. Y. Co. Clerk's No. 854. (Seal.)

[fol. 91] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

RETURN TO WRIT OF CERTIORARI

Before Hon. Samuel M. Hitchcock, United States Commissioner for the Southern District of New York

UNITED STATES

against

B. I. SALINGER, JR.

1. COMPLAINT

SOUTHERN DISTRICT OF NEW YORK, ss:

Maxwell S. Mattuck, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York and on information and belief alleges and charges:

That within the period of three years last past, B. I. Salinger, the defendant above named, was indicted at Sioux Falls, South Dakota, for violating certain statutes of the United States, towit, 215 U. S. C. C. using U. S. mails to defraud.

That an indictment was filed against the said B. I. Salinger in the aforesaid District of South Dakota;

That since the date of the said indictment the said defendant Salinger has been a fugitive from justice from the said District of South Dakota;

That the said defendant Salinger is now within the Southern District of New York, a fugitive from justice as aforesaid; against the peace of the United States and their dignity and contrary to the form of the statutes of the United States in such case made and provided.

The sources of deponent's information and the grounds of his belief are a telegram to the United States Marshal for the Southern District of New York from the United States Marshal for the District of South Dakota.

Wherefore, deponent prays that a warrant may issue for the above named defendant and that he may be apprehended, bailed or removed to the said District of South Dakota as the case may be.

[fol. 92] Maxwell S. Mattuck.

Sworn to before me this 21st day of October, 1922. Samuel M. Hitchcock, U. S. Commissioner, Southern District of New York.

Approved: M. S. Mattuck, Assistant United States Attorney.

[fol. 93]

WARRANT

The President of the United States of America to the Marshal of the United States for the Southern District of New York and to their Deputies or any or either of them:

Whereas, complaint on oath hath been made to me, charging that B. I. Salinger, Jr. did within the period of three years prior to the 21st day of October, in the year one thousand nine hundred and twenty-two at the Southern District of South Dakota, use the mails of the United States to defraud; against the peace of the United States and their dignity and against the form of the statute of the United States in such case made and provided.

Now, therefore, you are hereby commanded in the name of the President of the United States of America, to apprehend the said B. I. Salinger, Jr., and bring his body forthwith before me, or some Judge or Justice of the United States, wherever in the Southern District of New York he may be found that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal, this 21st day of October, in the year of our Lord one thousand nine hundred and twenty-two.

Samuel M. Hitchcock, United States Commissioner for the Southern District of New York. William Hayward, United States Attorney.

Endorsed: Warrant to Apprehend. Received this warrant on the 21st day of October, 1922, at New York City, and executed the same by arresting the within named B. I. Salinger, Jr., at New York City on the 21st day of October, 1922, and have his body now in Court, as within I am commanded. William C. Hecht, U. S. Marshal, S. D. of N. Y. Defendant arraigned, bail \$10,000. Hearing adjourned to the 4th day of November, 1922, at ten o'clock, A. M., Paroled for bail. Dated, New York, October 21, 1922. Samuel M. Hitchcock, U. S. Commissioner, Southern District of New York.

[fol.94] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

COMMITMENT

Before Samuel M. Hitchcock, United States Commissioner

Defendant, 11.8.1922, after having been heard upon the charge against him, ordered, that he be held to answer to the charge and any order of the Court and that he be admitted to bail in the sum of \$5,000 and that he be committed to the custody United States

Marshal for the Southern District of New York until such bail is given.

Dated, New York November 8, 1922.

Samuel M. Hitchcock, United States Commissioner, Southern District of New York.

Defendant having given bail, it is ordered that he be released from custody.

Dated, New York.

Samuel M. Hitchcock, United States Commissioner, Southern District of New York.

Bail fixed in the sum of \$10,000. Defendant paroled in custody of counsel until November 9, 1922, 10:30 A. M.

Bail of Commissioner Hitchcock ordered continued until November 9, 1922.

November 6, 1922.

J. W. M., U. S. C. J.

Final Commitment.

[fol. 95] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

MINUTES OF HEARING BEFORE COMMISSIONER

Hearing Before Samuel M. Hitchcock, United States Commissioner for the Southern District of New York, at New York, at his office, room No. 314, in the United States Court, Post Office Building, city of New York, on November 8th, 1922, at two-thirty p. m.

Appearances: William Hayward, United States Attorney, by M. S. Mattuck, Assistant United States Attorney, Counsel; Gilbert, Campbell & Barraneo, 14 Wall Street, New York City, by Richard Campbell and William McCool, Counsel; Wade H. Ellis, Washington, D. C.

Mr. Mattuck: The Government offers in evidence a certified copy of the indictment found in the Western Division for the District of South Dakota on the 20th day of May, 1922, and bench warrant on that indictment issued in the aforesaid district on the 18th day of October, 1922.

Mr. McCool: The defendant objects to the reception of this indictment in evidence upon the following grounds:

I. That said indictment and each and every count thereof failed to state facts sufficient to charge this petitioner or any of the defendants therein named with any crime or offense against the United

States or any law thereof, and failed to describe any crime or offense in violation of or punishable under any of the laws of the United States.

II. That said indictment and each and every count thereof failed to state facts sufficient to charge the petitioner or any of the defendants therein named with the commission of any crime or offense against the United States or any law thereof within the District of [fol. 96] South Dakota or any Division thereof.

III. That said indictment and each and every count thereof failed to state facts sufficient to charge petitioner or any of the defendants therein named with the commission of any crime or offense against the United States or any law thereof within the Western Division of the District of South Dakota.

IV. That if any offense against the laws of the United States be charged at all, and your petitioner says that no such offense is so charged, that such facts as are charged show that no offense was committed by your petitioner or any or all of the defendants named in said indictment within the District of South Dakota or any Division thereof, and that therefore said indictment and any proceedings thereunder, and especially any trial, are and would be in violation of the rights of petitioner under the Fifth and Sixth Amendment of the Constitution of the United States, and of his rights under Section Three of Article Three thereof.

V. That petitioner protested that said indictment does not charge any offense at all, and if any, none within the jurisdiction of the Court to which said indictment was returned, and says that in any event such offence as may be charged in the indictment is charged to have been committed, at least according to the conclusion of the pleader, in the Southern Division of South Dakota, whereas the indictment was returned at and by a Grand Jury sitting in and for the Western Division of South Dakota.

VI. Petitioner further says that by reason of the provisions of Section 53 of the Judicial Code of the United States, said Grand Jury was entirely without power or authority to return said indictment, and said Court was without power or authority to receive it, and that this Court is now for like reasons without power or jurisdiction to take any proceedings under said invalid indictment, and particularly, to arrest, or detain or imprison, your petitioner, upon any warrant issued that is founded upon said indictment, and particularly without power or jurisdiction to direct the removal of your petitioner to the District of South Dakota, and in any event, has no power to direct the return of your petitioner to the Southern Division of the District of South Dakota, wherein no indictment has been found against your petitioner.

[fol. 97] VII. Subject to grounds, "I, II, III, IV, V, and VI" hereof, petitioner further states that evidence presented before the Grand Jury as to all the counts contained in said indictment except

Counts 1, 4 and 6, thereof, was insufficient to sustain the indictment for the reasons, among others, that no person called as a witness before said Grand Jury had any personal knowledge or whether the letters relied upon in said counts had ever been mailed by petitioner or any of the defendants named, or whether said letters had ever been carried by mail, or whether they had been delivered to the addresses thereof by mail, and the said letters bearing no evidence of where they had been mailed or delivered, said counts of the indictment were based on the incompetent and hearsay testimony of some or all of the persons whose names are endorsed on the indictment as witnesses before said Grand Jury.

VIII. That said indictment and each and every count thereof is void as being based on incompetent and hearsay testimony, and particularly because at the hearing before the Grand Jury there was introduced and used certain books, and the legal custodian of said books although subpoenaed to appear before and actually in attendance upon said Grand Jury to testify to the identity and custody of said records, was not called as a witness and did not lay the foundation for the introduction or use thereof, and your petitioner in support of grounds "VII" and "VIII" hereof presents the affidavits of Charles H. Rathbun and Samuel W. Huntington, members of the Grand Jury that found said indictment.

IV. That subject to grounds "I, II, III, IV, V, and VI" hereof, petitioner says that said indictment and each and every count thereof is duplicitous and not sufficiently specific, is repugnant, too vague, indefinite, ambiguous and uncertain to charge any facts sufficient to constitute any crime or offense, and fail to inform petitioner, or the other defendants of the charge against him or them or make the same clear to the common understanding.

X. Subject to grounds "I, II, III, IV, V and VI" hereof, petitioner says that the indictment as a whole is needlessly long and involved and contains much redundant and immaterial allegations, which defects when taken together render it difficult to construe and almost unintelligible.

Furthermore, the indictment charges a scheme by means of fraudulent pretenses with intent to defraud and in connection with said scheme the use of the Post Office establishment. It appears on the face of the indictment that when the letters were written, the [fol. 98] acts had then been completed and executed and were incapable of being furthered by the use of the mails.

And finally that the indictment does not charge what, if anything, was obtained from the victims named in the indictment and does not show any fraud exercised. The only fraud alleged, referring to the sale of shares of stock of the Midland Corporation, and nothing in the indictment to show that they were not worth the consideration that was paid therefor.

Upon all these grounds, Mr. Salinger claims that the indictment should not be received in evidence, it being wholly void on the face thereof.

The Commissioner: I cannot pass upon any such question as that until the indictment is in evidence.

Mr. McCool: Do you overrule my objection, Mr. Commissioner?

The Commissioner: Yes.

Mr. McCool: I save my exception to that.

The Commissioner: Have you a similar objection to the warrant that has been issued pursuant to the indictment?

Mr. McCool: Precisely. That has not been offered yet.

The Commissioner: Yes, it has been offered.

Mr. McCool: I make the same exception to the warrant, on the ground that it is wholly immaterial and not founded on a valid indictment.

The Commissioner: Your objections are overruled at the present time.

Mr. McCool: I respectfully except.

It is now in evidence, and I move to strike it out on like grounds, both the indictment and the warrant.

The Commissioner: Motion denied.

Mr. McCool: I respectfully except.

Mr. Mattuck: The defendant concedes the identity of the witness.

The Government rests.

Mr. McCool: I move to dismiss the proceedings upon the same grounds which I stated in my objection to the reception of the indictment: No evidence to show that there is any valid indictment and no evidence to show that there is any reasonable cause to show the man is guilty.

[fol. 99] The Commissioner: Unless an indictment is so absolutely bad upon its face that there can be nothing said in its favor, it is held practically in every district, and it has been held in the Supreme Court of the United States, that the proper place to raise each objections is in the forum in which the indictment was found.

I have not had an opportunity to examine this indictment at length. It has only been offered to-day and since it has been offered this morning it has been in the custody of counsel for the defendant and the Commissioner has not even read it.

I understand that this matter is one which is to be expedited and that an application is going to be made to the Court in regard to this indictment and that the ends of the defendant will best be satisfied if he rests now on this motion and my ruling; by having me commit the defendant to the custody of the marshal and then you will make such application in the Courts as you may desire.

Mr. McCool: You rule, then, that your Honor will not receive any evidence that this man is not guilty in fact? Does your Honor want to go into that?

Mr. Mattuck: Yes, we will receive any evidence you want to offer.

Mr. McCool: We cannot offer any to-day. We want reasonable opportunity to present evidence that the man is not guilty in fact.

The Commissioner: One moment. I do not see a great deal that you can do. It is incurring a large expense. If your objections to the indictment are good and valid, they will be upheld by the Court.

and if they are not, the Court will send this matter back to me for further hearing upon your suggestion. Your rights may be saved in that way, whatever rights you may have, but for the purpose of expedition, and you, having been informed that the District Attorney for the demanding district would be here at this time, I think it is only proper that this proceeding should take this course.

Mr. McCool: In other words, the evidence will not be received?

Mr. Mattuck: Just one moment. I will ask the Commissioner not to rule until I have made my statement about the reception of evidence at this time. I would like to make a statement on the record.

The Commissioner: Go ahead.

Mr. Mattuck: When was it you were here with me, Mr. McCool? [fol. 100] Mr. McCool: The 21st of October was the first time.

Mr. Mattuck: No, that you actually came with me to the Commissioner's office?

The Commissioner: That was the 21st of October.

Mr. Mattuck: On the 21st of October, 1922, Mr. McCool came with Government counsel to the office of the United States Commissioner for the purpose of arranging a date mutually convenient to himself and to the Government's counsel for the proceeding with the hearing in this case. At that time and in the presence of the Court, Government's counsel stated to Mr. McCool that the Government would be ready to proceed on Monday, November 6th, with the hearing, at which time the course that the Government would follow would be this: That the indictment would be offered in evidence and that identity of the defendant would be proved, whereupon the Government would rest.

It was also stated at that time by counsel for the Government that Mr. Clark, the District Attorney of the District in which the indictment was found, was coming here and that in order that he may not be put to the inconvenience and expense of remaining in this district over an extended period of time, it was suggested at that time to Mr. McCool that he be prepared on November 6th to go on with the hearing in order that the hearing may be completed within as short a space of time as possible, and that in the event of a commitment by the Commissioner, he would be enabled to procure his writ and have the matter cleaned up within three days.

Mr. McCool at that time stated that November 6th, would be inconvenient for him but that if I would agree to November 8th, the day following Election Day, it would be absolutely agreeable to him to proceed with the hearing at that time, and in the event of a commitment, to have his papers prepared and to go before the Court on a petition for a writ.

Mr. Mattuck, Government's Counsel, at that time stipulated that that was perfectly agreeable; that on November 8th Mr. Clerk would be notified to be here, at which time he would be prepared to go on with an- complete the hearing, Mr. Clark coming all the way from South Dakota. Mr. McCool agreed.

Government's counsel now object to any further delay in the going on with this hearing, but does not oppose the admission of any evidence which the defense wished to offer now in rebuttal of the

[fol. 101] presumption of probable cause created by the indictment. The objection of Government's counsel is entirely to delay, a delay which ever effort was made by Government's counsel to forestall ten days ago. Within that period of ten days, it is urged that every effort could have been made by the defense to have procured any witnesses which they desired to rebut probable cause. The objection of Government's counsel, therefore, is not to the admission of evidence, but to a delay and a postponement of this hearing on the grounds stated.

Mr. McCool: Before this morning, it was impossible for the defendant to know what indictment he was called to answer in this District. The indictment was inspected this morning. It now shows an indictment found in the Western Division of the District of South Dakota. I want an opportunity to meet that particular indictment, as we understand another indictment has been found in another Division. There is no desire on the part of the defendant to delay this hearing if the Government is not willing to give us reasonable opportunity to present our witnesses and bring them on and answer this indictment, of course it is impossible to do it today.

I understand that the Commissioner has ruled that that evidence will not be received, to which I save my exception.

The Commissioner: I have not ruled any such way at all and the record will not show it. On the other hand I appreciate that this hearing before me is for the purpose of taking testimony.

I am perfectly familiar with the case of the United States vs. Green, where the action was decided by Judge Brown in the first instance twenty-five years ago, and I certainly never said that I would not receive evidence. But it is a question of when that evidence should be presented.

It is perfectly clear to my mind what happened before me on the 21st of last month. Then the matter was set over until the 4th of November for the reasons stated, that the District Attorney for the demanding district would be here at that time, and it was suggested that you be prepared at that time to go on with the hearing.

If you are not prepared and the Government has made its prima facie case by presenting this indictment, I have overruled your objection to its receipt in evidence, then of course, I have nothing else to do. The Government demands it and having in mind what the arrangements were and also having in mind that you might have [fol. 102] obtained a copy of the indictment by application to the Court in which it was found.

Mr. Mattuck: Not only that. May I state on the record that there was handed to me, Government's Counsel, the date of the original arrest of Mr. Salinger (that was on October 21st or 22nd), a copy of the indictment itself by counsel for the defense. I think that is a clear rebuttal of the argument that they did not know what they were indicted for.

Mr. McCool: We did not know which indictment we were to answer because there was another indictment.

Mr. Mattuck: We are only calling upon counsel to answer the indictment that he would know about.

Mr. McCool: We were told here that another indictment had been found in another division.

[fol. 103] Mr. Mattuck: If your Honor pleases, the Government's Counsel cannot be responsible for everything the defendants have been told. The defendants are being called upon here to answer an indictment, a copy of which they themselves gave me some fifteen days ago.

Mr. McCool: There is not any use of our going ahead with our proofs for just one section of it. It is not going to do the defendant any good until he can bring all his witnesses here.

Mr. Mattuck: You are just attacking the matter here and I do not see any useful purpose in it.

Mr. McCool: We make our offer, if reasonable opportunity is given to us, to prove that we are not guilty of fact. I understand that the Government objects to reasonable opportunity being given.

Mr. Mattuck: The Government objects to an adjournment.

Mr. Campbell: Which is the same thing.

The Commissioner: I do not understand that it is the same thing. You had this indictment before you at the time that this defendant was here and then you were given from the 21st of October until the 4th of November to prepare for this hearing.

Mr. Campbell: Up to this morning, we did not know to which of these Indictments we were going to answer. I understand that there is another indictment.

Mr. Mattuck: I do not understand anything about it. We are not responsible for the understanding of counsel.

The Commissioner: I have passed upon this matter.

Mr. Mattuck: The indictment which you are called upon to answer is the indictment which you have had in your possession for a long time; just how long, I do not know, but certainly from the date of the inception of this hearing.

Mr. McCool: Another thing that I would like to call your Honor's attention to in support of the reasonableness of my request is this: Part of our proof consists of the books of the company. We are enjoined at this time by the order of the Court, as I understand it, from even looking at those books, much less producing them. We would have to have opportunity to have that order vacated and [fol. 104] bring those books on, so that we could prove our case. It would take at least fifteen days to try this case on its merits.

Mr. Mattuck: In answer thereto, Government's counsel will offer a certified copy of the proceedings that have heretofore taken place in the District of South Dakota, wherever it is. I would like to state on the record, if your Honor please, just what has taken place in this case. Then I will offer the paper itself in evidence, if necessary.

The indictment, as already stated, was found on the 20th day of May, 1922. Two of the defendants, not the defendant Salinger, were arraigned and pleaded to the Indictment on the 17th day of October, 1922. The defendant Salinger was arrested.

Mr. McCool: How is all this relevant on the question of probable cause?

Mr. Mattuck: Not competent at all on the question of probable

cause. The question that you have just raised is the question of whether or not the defendant is to be given reasonable opportunity to produce the books. I am going to show that he has had reasonable opportunity to get books, make motions and everything else.

Mr. McCool: That is not the question here before the Commissioner.

Mr. Mattuck: You just raised the question.

Mr. McCool: The question is whether we shall have reasonable opportunity now.

Mr. Mattuck: The counsel can very well come in three weeks from now and ask for further reasonable opportunity. I am trying to show that reasonable opportunity has been had by counsel for a long time.

Mr. McCool: I cannot see that that is relevant. We have not had reasonable opportunity to produce the evidence on this hearing.

Mr. Mattuck: I have answered that again by stating that ten days—

Mr. McCool: I say that ten days is not enough.

Mr. Mattuck: May I be permitted to finish my argument in answer to his for the purpose of the record?

The Commissioner: Yes, I will not stop you.

Mr. Mattuck: The defendant Salinger gave bail in the District of Iowa, Northern District, on the 13th day of June, 1922. Bond in the sum of \$10,000 was given by the defendant Salinger for appearance in South Dakota. Thereafter the trial date was set for the 17th day of October, 1922, at which time the defendant Salinger [fol. 105] did not conform to the condition of his bond, did not appear in the District of South Dakota for trial, and the bond in that District was thereupon ordered forfeited.

It is, therefore, submitted with regard to the question of a motion for the return of books or whatever argument it was that Mr. McCool made with regard to further time, that such a motion is being interposed here merely for purposes of delay, because reasonable opportunity for the defendant Salinger was given to him between the dates of the filing of the indictment and certainly between the dates of his furnishing bond for his appearance in South Dakota, and the date of trial, to take such steps as he deemed necessary for the purpose of procuring books and other evidence which he deemed necessary. For the purpose of this hearing, it is again submitted that in view of the stipulation entered into between counsel to proceed on this day that no adjournment should be granted at this time.

Mr. McCool: In answer to that, counsel for the defendant very respectfully but very earnestly objects to any statement that he is attempting to delay this proceeding. He states his purposes here are to attempt to aid his client, not to impede the progress of the government.

The Commissioner: Is there any motion before me now?

Mr. McCool: Yes, sir, the motion is for reasonable opportunity to get these books which have been enjoined.

The Commissioner: I take it that that is a motion for an adjournment.

Mr. McCool: Yes, sir.

The Commissioner: I shall deny that motion.

Mr. McCool: I respectfully except.

The defendant offers in evidence what purports to be an affidavit of Mr. S. W. Clark, United States Attorney for the District of South Dakota, verified October 17th, 1922, and a copy of an order of transfer granted by the Honorable James D. Elliott, District Judge of the District Court of the United States for the District of South Dakota, Western Division.

You concede, Mr. Mattuck, that those are true copies?

Mr. Mattuck: Yes. That concession should not be taken to mean that there is no objection to their admission in evidence. Yes, I will concede that they are the affidavits. They bear the original signature of Mr. Clark. They are copies.

Mr. McCool: And that the contents thereof are true?

[fol. 106] Mr. Mattuck: And that the contents are true.

Mr. McCool: The defendant offers in evidence a certified copy of an affidavit of S. W. Clark, verified October 17, 1922.

Mr. Mattuck: No objection to those things going in.

Mr. McCool: And an order of the Honorable James D. Elliott, judge of the United States District Court, District of South Dakota, Western Division, dated October 17th, 1922, transferring the above entitled cause from the Western Division of South Dakota to the Southern Division thereof. I ask that they be marked defendant's Exhibits A and B.

(Marked Defendant's Exhibits A and B respectively.)

Mr. McCool: The defendant rests and now renews his motion to dismiss.

The Commissioner: Motion is denied.

Mr. McCool: To which the defendant respectfully excepts.

The Commissioner: Of course, this brings this matter to a conclusion.

[fol. 107] NOTE.—The Indictment herein, same as Indictment copied at page — of this Transcript.

[fol. 108]

6. BENCH WARRANT

To the Marshal of the United States for the District of South Dakota and to his deputies or any or either of them:

Whereas, at a term of the District Court of the United States, for the District of South Dakota, begun and held at Deadwood, within and for the District aforesaid, on the 20th day of May, A. D., 1922, the Grand Jurors in and for the said District of South Dakota, brought into the said Court, a true bill of indictment against B. I. Salinger, Jr., charging him with the crime of using the United States mails to defraud, as by said indictment now remaining on file,

and of record in the said Court, may more fully appear, to which said indictment the said B. I. Salinger, Jr., has not yet appeared or pleaded.

Now, therefore, you are hereby commanded in the name of the President of the United States to apprehend the said B. I. Salinger, Jr., and bring his body before the said Court at Sioux Falls, South Dakota to answer the indictment aforesaid; the bail bond of said defendant having been this day forfeited by the Court.

Witness, the Honorable James D. Elliott, Judge of said United States District Court, District of South Dakota, and my hand and seal of said Court, at Sioux Falls, this 18th day of October, A. D., 1922.

Jerry Carleton, Clerk. (Seal of Court.)

[fol. 109] [File endorsement omitted.]

Warrant returned and filed this 20th day of October, A. D., 1922.

Jerry Carleton, Clerk, By C. C. Schwarz, Deputy.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

Received this Warrant on the 18th day of October, 1922, and after a due and diligent search I am unable to find the within-named defendant, B. I. Salinger, Jr., within this District.

W. H. King, U. S. Marshal, By N. H. Jensen, Deputy.

[fol. 110] (Seal of Court.)

UNITED STATES OF AMERICA,
District of South Dakota, ss:

CLERK'S CERTIFICATE

I, Jerry Carleton, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy is a correct transcript from such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of Said Court, at Sioux Falls in said District this 20th day of October, A. D., 1922.

Jerry Carleton, Clerk, By C. C. Schwarz, Deputy. (Seal.)

[fols. 111 & 112] DEFENDANT'S EXHIBIT B—Omitted; printed side
page 18 ante

[fol. 113] DEFENDANT'S EXHIBIT A

IN THE DISTRICT COURT OF THE UNITED STATES, DISTRICT OF SOUTH
DAKOTA, WESTERN DIVISION

No. 983—W. D.

THE UNITED STATES OF AMERICA, Plaintiff,
against

FRED C. SAWYER, C. H. BURLINGAME & B. I. SALINGER, JR., Defendants

ORDER OF TRANSFER—Filed Oct. 17, 1922

Application having been made by the United States Attorney for the District of South Dakota, for a transfer of the above entitled cause from the Western Division of the District of South Dakota to the Southern Division thereof, said application being presented in open Court and in the presence of the defendant Fred C. Sawyer and of their attorneys, and good cause being shown;

It is now ordered that the above entitled cause be and the same is hereby transferred from the Western Division of the District of South Dakota to the Southern Division of the District of South Dakota, and that all further proceedings herein be had in said Southern Division.

Dated at Sioux Falls, Minnehaha County, South Dakota, this 17th day of October, A. D., 1922.

By the Court:

Attest: Jerry Carleton, Clerk. (Seal of Court.)

[File endorsement omitted.]

[fol. 114] UNITED STATES OF AMERICA,
District of South Dakota, ss:

CLERK'S CERTIFICATE

I, Jerry Carleton, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy is a correct transcript from such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Sioux Falls, in said District this 23rd day of October, A. D., 1922.

(Signed) Jerry Carleton, Clerk. (Seal of U. S. District Court, Dist. of So. Dakota.)

UNITED STATES OF AMERICA,
District of South Dakota, ss:

JUDGE'S CERTIFICATE

I, James D. Elliott, Judge of the District — of the United States, within and for the District afore mentioned, the same being a Court of Record, within and for the District aforesaid, do hereby certify that Jerry Carleton is Clerk of said Court, and was such Clerk at the time of making and subseribing to the foregoing certificate, and that the attestation of said Clerk is in due form of law and by the proper officer.

In testimony whereof, I do hereby subscribe my name at Sioux Falls, South Dakota, this 23rd day of October, A. D., 1922.

(Signed) Jas. D. Elliott, Judge of the District Court of the United States for the District of South Dakota. (Seal of the District Court of the United States for the District of South Dakota.)

[fol. 115] UNITED STATES OF AMERICA,
District of South Dakota, ss:

CLERK'S CERTIFICATE TO JUDGE

I, Jerry Carleton, Clerk of the District Court of the United States of America within and for the District aforesaid, do hereby certify that the Honorable James D. Elliott, whose name is subseribed to the foregoing certificate, was, at the time of subseribing the same, Judge of the District Court, within and for the District aforesaid, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Sioux Falls, in said District, this 23rd day of October, A. D., 1922.

(Signed) Jerry Carleton, Clerk of the United States District Court for the District of South Dakota. (Seal of the U. S. District Court, Dist. of South Dakota.)

AT A TERM OF THE UNITED STATES DISTRICT COURT HELD IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK, AT THE COURT-HOUSE THEREOF, IN THE BOROUGH OF MANHATTAN, NEW YORK CITY, ON THE 15TH DAY OF NOVEMBER, 1922.

Present: Hon. Julian W. Mack, C. J.

[Title omitted]

ORDER DISMISSING WRITS

The writs of habeas corpus and certiorari heretofore allowed to the above named B. I. Salinger, Jr., having duly come on to be heard before the Honorable Julian W. Mack, Circuit Judge, at a term of this Court, held on the 13th day of November, 1922, and after hearing William P. McCool, of counsel for petitioner, in support of said writs, and Maxwell M. Mattuck, Esq., Assistant United States Attorney, in opposition thereto and due deliberation having been had thereon, on motion of William Hayward, United States Attorney.

Ordered, that said writs be and the same hereby are dismissed.

Enter.

Julian W. Mack, C. J.

[fol. 116] THE UNITED STATES OF AMERICA,
Southern District of New York:

WARRANT OF REMOVAL

The President of the United States of America to the Marshal of the United States for the Southern District of New York and to his Deputies or any or either of them:

Whereas, B. I. Salinger, Jr., has been brought before me upon a commitment made by a United States Commissioner in this District for the purpose of obtaining a warrant for the removal of the said B. I. Salinger, Jr., to the District of South Dakota, in which District the offense for which said prisoner has been so committed is to be tried, a copy of which commitment is hereto attached;

And whereas, the United States Attorney for the Southern District of New York has made application to me under the provisions of the Revised Statutes of the United States, for a warrant for the removal of said prisoner to the District of South Dakota, and an examination of the matter having been made by me;

Now, therefore, you are hereby commanded to remove said prisoner now in your custody forthwith to the said District of South Dakota and there deliver him to the United States Marshal for the District of South Dakota, or some other proper officer authorized to receive said prisoner, in order that he may be dealt with according to law.

Given under my hand and seal of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, this 15th day of November, 1922.

Julian W. Mack, Circuit Judge.

[fol. 117] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of B. I. SALINGER, JR.

PETITION FOR APPEAL AND ADMISSION TO BAIL PENDING APPEAL

And now comes B. I. Salinger, Jr., and respectfully represents that on the 13th day of November, 1922, a judgment was entered by this Court dismissing his petition for habeas corpus and certiorari and remanding him in custody of Hon. William Hecht, United States Marshal for the Southern District of New York, awaiting removal to the Western Division of the District of South Dakota.

And your petitioner respectfully shows that in said record proceedings and order in this cause lately pending against your petitioner manifest errors have intervened to the prejudice and injury of your petitioner all of which will appear more in detail in the assignment of error which is filed with this petition.

Wherefore, your petitioner prays that an appeal may be allowed him from said order to the United States Circuit Court of Appeals for the Second Circuit, and that said appeal may be made a supersedeas upon the filing of a bond to be fixed by the Court; that the petitioner may be admitted to bail pending the determination of the appeal to the said Court, and that the petitioner may have thirty days to prepare and file his bill of exceptions herein.

Gilbert, Campbell & Barranco, Attorneys for Petitioner, 14 Wall Street, New York City.

[fol. 118] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER GRANTING APPEAL AND ADMISSION TO BAIL

On reading of the petition of B. I. Salinger, Jr., for appeal and consideration of the assignment of errors presented therewith it is ordered that the appeal as prayed for be and is herewith allowed. And it appearing to the Court that a citation was duly served as provided by law, it is ordered that petitioner be admitted to bail pending

the final determination of this appeal in the sum of \$10,000, the appeal to operate as a supersedeas.

Costs bond on appeal is hereby fixed in the sum of \$250.00. Petitioner allowed up to and including December 13, 1922, to make and file his bill of exceptions herein.

New York, November 15, 1922.

Julian W. Mack, Judge.

[fol. 119] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

And now comes B. I. Salinger, Jr., by Gilbert, Campbell & Barranco, his attorneys, and in connection with his petition of an appeal, says that in the record and proceedings and order aforesaid, and during the hearing of the above entitled cause in said District Court, error has intervened to his prejudice, and this defendant here assigns the following errors, to-wit:

1. The Court erred in not holding that this petitioner and appellant, is wrongfully held and illegally imprisoned, and in dismissing his petition and remanding his into custody for removal from the Southern District of New York to the Southern Division of the District of South Dakota.
2. The Court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Constitution of the United States and the Amendments thereto.
3. The Court erred in dismissing the petition for habeas corpus and remanding appellant into custody for removal.
4. The Court erred in dismissing the petition for certiorari.
5. The Court erred in holding that the Commissioner did not err in receiving into evidence, over the objection and exception of petitioner, certified copy of indictment alleged to have been returned against this petitioner and others by the Grand Jury of the Western Division of the District of South Dakota, and in admitting to evidence certified copy of bench warrant founded on said indictment; and furthermore, in refusing to strike out the said indictment and bench warrant upon the motion of petitioner; and the Court erred further in refusing to sustain the exceptions taken by the petitioner before the Commissioner to the Commissioner's ruling admitting the said documents in evidence and in refusing to strike the same out.
- fol. 120] 6. The Court erred in refusing to hold that the said Commissioner was in error in his finding that there was probable

cause to believe that the petitioner was guilty of the commission of any offense against the United States and in particular of the offense attempted to be set forth in the said indictment.

7. The Court erred in refusing to hold that the Commissioner erred in his refusal to afford to the petitioner reasonable opportunity of proving that said petitioner was not guilty in fact of any crime against the United States and particularly of the crime attempted to be set forth in said indictment.

8. The Court erred in refusing to hold that the indictment and each and every count thereof failed to state facts sufficient to charge this petitioner or any of the defendants therein named with any crime or offense against the United States or any law thereof and failed to describe any crime or offense in violation of or punishable under any of the laws of the United States.

9. The Court erred in refusing to hold that said Indictment and each and every count thereof failed to state facts sufficient to charge the petitioner or any of the defendants named therein with the commission of any crime or offense against the United States or any law thereof within the District of South Dakota or any division thereof.

10. The Court erred in refusing to find that said indictment and each and every count thereof failed to state facts sufficient to charge petitioner or any of the defendants therein named with the commission of any crime or offense against the United States or any law thereof within the Western Division of the District of South Dakota.

11. The Court erred in refusing to find that if any offense against the laws of the United States was charged in and by said indictment at all (the petitioner maintaining that no such offense was so charged), that such facts as are charged show that no offense was committed by the petitioner or any or all of the defendants named in said indictment within the District of South Dakota or any Division thereof, and that therefore said indictment and any proceedings thereunder and especially any trial are and would be in violation of the rights of petitioner under the Fifth and Sixth Amendments of the Constitution of the United States and of the rights under Section Three of Article Three thereof.

[fol. 121] 12. The Court erred in failing to sustain the petitioner in his protest that said indictment did not charge any offense at all, and if any, none within the jurisdiction of the Court to which said Indictment was returned, and in failing to sustain the petitioner's protest that in any event such offense as may be found to be charged in the indictment is charged to have been committed, at least according to the conclusion of the pleader, in the Southern Division of the District of South Dakota whereas as it appears upon the face of the Indictment said indictment was returned at and by a Grand Jury sitting in and for the Western Division of the District of South Dakota.

13. The Court erred in refusing to hold that by reason of the provisions of Section 53 of the Judicial Code of the United States the said Grand Jury sitting in and for the Western Division of the District of South Dakota was entirely without power or authority to return said indictment and said Court was without power or authority to receive it and that the District Court of the United States for the Southern District of New York was for like reasons without power or jurisdiction to take any proceedings under said invalid indictment and particularly to arrest or detain or imprison your petitioner upon any warrant issued founded upon said indictment and particularly without power or jurisdiction to direct the removal of your petitioner to the District of South Dakota and in any event without power to direct the return of your petitioner to the Southern Division [fol. 122] of the District of South Dakota in which division in any event no indictment has been found against the petitioner.

14. The Court erred in refusing to hold that the said Grand Jury sitting in and for the Western Division of South Dakota was in any event without power or authority to hear any charge against your petitioner or to return any indictment against him for the reason that said Grand Jury was illegally and unlawfully called and constituted and for the reason, among others, that said Grand Jury was not composed of Citizens of the United States residing within the Western Division of the District of South Dakota, but that many of the members of said Grand Jury resided in other Divisions of the District of South Dakota and that for that reason were and are disqualified from acting upon the Grand Jury sitting in and for the Western Division of South Dakota.

15. The Court erred further in refusing to hold that subject to the foregoing objections that the evidence presented before the Grand Jury as to all the counts contained in said indictment excepting counts 1, 4, and 6 thereof were insufficient to sustain the indictment for the reason, among others, that no person called as a witness before said Grand Jury had any personal knowledge of whether the letters relied upon in said counts had ever been mailed by petitioner or any of the defendants named or whether said letters had ever been carried by mail or whether they had been delivered to the addresses thereof by mail and the said letters bearing no evidence of where they had been mailed or delivered, said counts of the indictment were based on the incompetent and hearsay evidence of some or all of the persons whose names are endorsed on the indictment as witnesses before said Grand Jury; and furthermore, said indictment and each and every count thereof is void as being based on incompetent and hearsay testimony and particularly because at the hearing before the Grand Jury there was introduced and used certain books and the legal custodian of said books, although subpoenaed to appear and actually in attendance upon said Grand Jury to testify to the identify and custody of said records was not called as a witness and did not lay the foundation in the introduction or use thereof, as appears more particularly by the affidavits of Charles H. Rathbun and Samuel W. Huntington, members of the Grand Jury that found said

indictment, copies of which affidavits were submitted to the Court upon the petition for habeas corpus herein.

[fol. 123] 16. The Court erred in refusing to hold that subject to grounds 1 to — inclusive hereof that said indictment and each and every count thereof is duplicitous and not sufficiently specific, is repugnant, to vague, indefinite, ambiguous and uncertain to charge any facts sufficient to constitute any crime or offense and to inform petitioner or the other defendants of the charge against him or them or make the same clear to the common understanding; and furthermore, that said indictment as a whole is needlessly long and involved and contains much redundant and immaterial allegations which defects when taken together render it difficult to construe and almost unintelligible and particularly fails to show that anyone whomsoever was in effect defrauded by your petitioner or by any of the defendants named in said indictment whether by means of the said letters or otherwise.

17. The Court erred in refusing to hold that the proceedings before the Commissioner *was* improperly conducted and that no proper or sufficient evidence was introduced thereon to establish that there was probable cause to believe the petitioner guilty of any crime and particularly of the alleged crime attempted to be set forth in the said indictment.

18. The Court erred in refusing to find that the Commissioner erred in refusing to dismiss the proceedings before him and in refusing to grant the motion made by petitioner to dismiss the same and the Court erred further in refusing to sustain the petitioner's exceptions to said ruling of said Commissioner.

19. The Court erred in holding that the return made by William C. Hecht, Marshal of the United States for the Southern District of New York to the writ of habeas corpus was sufficient to create an issue and that the facts therein stated were sufficient to justify the said Marshal in detaining your petitioner.

20. The court erred in refusing to hold that the Court had no jurisdiction of the petitioner for the reasons more particularly hereinbefore set forth and in refusing to find that the Commissioner had no power to order the arrest of your petitioner and in refusing further to find that the Marshal was without power to arrest or imprison him, for the reason that the warrant issued by said Commissioner was based solely upon an alleged indictment which was patently and manifestly insufficient to charge any crime as more particularly hereinbefore set forth and therefore said warrant was and is illegal and without justification in law and the arrest made thereunder was unwarranted, unjustified and illegal.

[fol. 124] 21. The Court erred further in finding that the proceeding conducted by the Commissioner was proper and lawful and that the evidence introduced upon the hearing before the Commissioner by the Government was legal evidence and sufficient to estab-

lish there was probable cause to believe the petitioner guilty of any crime.

22. The Court erred further in refusing to sustain the petitioner's exceptions to the Commissioner's refusal to allow petitioner to introduce evidence to establish that he was not guilty in fact, such refusal being based upon the sole ground that the Government urged that to permit of such opportunity would inconvenience the District Attorney for the District of South Dakota without proof upon the part of the Government that the affording of such reasonable opportunity would in any wise prejudice the United States of America.

By reason whereof, this petitioner and appellant prays that said order may be reversed and that he be ordered discharged.

Gilbert, Campbell & Barranco, Attorneys for Petitioner and Appellant.

MEMO. AS TO BOND

Approved appeal and supersedeas bail bond filed Nov. 14, 1922 (not printed).

CITATION ON APPEAL—Omitted in printing

[fol. 125] Service of the within citation and receipt of a copy is hereby admitted this 15th day of November, 1922.

William Hayward, U. S. Attorney.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

M 7-356

[Title omitted]

DOCKET ENTRIES

Attorneys: Gilbert, Campbell & Barranco, 14 Wall St., N. Y. C.
1922.

Nov. 8. Filed Petition for Habeas Corpus and Certiorari and issued Writ—Ret. 11, 13, 22.
 " 9. " Bond \$10,000—Southern Surety Co.
 " 11. " Affdt. of U. S. Marshal, S. D. of N. Y. as to dismissing Writ.
 " 14. " Affdt. of U. S. Marshal, Wm. C. Hecht.
 " " " Order dismissing Writs.
 " " " Assignment of Errors.

Nov. 14. Filed Petition and Order allowing appeal.
 " " " Writ of Certiorari.
 " " " Writ of H. C.
 " " " Citation on appeal to C. C. A. Ret.
 " 17. " Bond—\$10,000—Southern Surety Co.
 Nov. 8. Filed Bond for Costs \$250—Southern Surety Co.
 Dec. 12. " And Issued Writ of Error.

A true copy. Alexander Gilchrist, Jr., Clerk. (Seal.)

[fol. 126] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER TO CERTIFY RECORD

On reading the annexed praecipe and stipulation dated December 26, 1922, by and between the attorneys for petitioner and the United States Attorney, in the above case, it is

Ordered, that the clerk certify the transcript of record on the appeal taken by the plaintiff from order dismissing writs of habeas corpus and certiorari in accordance with said stipulation and praecipe.

Dated, N. Y., December 27, 1922.

J. W. Mack, U. S. C. J.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated that the clerk of the District Court of the United States for the Southern District of New York may certify the transcript of record on the appeal in accordance with the praecipe hereto annexed.

Dated, December 26, 1922.

Gilbert, Campbell & Barranco, Attorneys for Petitioner.
 William Hayward, U. S. Attorney.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

PRÆCIPÉ FOR TRANSCRIPT OF RECORD

Counsel for the respective parties agree that the following and no [fol. 127] other papers constitute the transcript of record:

Indictment, complaint, warrant, commitment, bench warrant, bill of exceptions, petition for leave to appeal, order allowing appeal, assignment of errors, petition for writ of habeas corpus and certiorari, writ of error, orders extending time to file record, writ of habeas corpus, writ of certiorari, return to writs, warrant of removal, order dismissing writs, citation on appeal, præcipe, stipulation on præcipe, order approving præcipe, stipulation re certification, clerk's certificate.

Dated, December 26, 1922.

Gilbert, Campbell & Barranco, Attorneys for Petitioner.
William Hayward, U. S. Attorney.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above entitled matter, as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York in the Southern District of New York, this 27th day of December, in the year of our Lord One Thousand nine hundred and twenty-two and of the Independence of the said United States the One hundred and forty-sixth.

Alexander Gilchrist, Jr., Clerk.

[fol. 128] UNITED STATES OF AMERICA,
Southern District of New York, ss:

CLERK'S CERTIFICATE

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing

pages numbered from 1 to 140 inclusive, contain a true and complete transcript of the record on appeal filed in this court in the case of In the Matter of B. I. Salinger, Jr., as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit this 13th day of April in the Year our Lord One Thousand Nine Hundred and twenty-three and of the Independence of the United States the One Hundred and Forty-seventh.

(Signed) Wm. Parkin, Clerk. (Seal.)

[fol. 129] EXHIBIT IN EVIDENCE: BOND ON REMOVAL TO THE DISTRICT OF SOUTH DAKOTA—Filed April 20, 1923

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered that on this 20th day of March, in the year of our Lord, one thousand nine hundred and twenty-three, before me Alex. Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, in the Second Circuit, personally came B. I. Salinger, Jr., principal, and Southern Surety Company of Des Moines, Iowa, Surety, and acknowledged themselves to owe to the United States of America, that is to say, the said B. I. Salinger, Jr., the sum of Fifteen Thousand (\$15,000) Dollars, and the said Southern Surety Company of Des Moines, Iowa the sum of fifteen thousand (\$15,000) Dollars separately to be levied and made of their respective goods and chattels, lands and tenements to use of the said United States of America, if default shall be made in the following conditions *following*, to-wit:

Now therefore the conditions of this recognizance are such that if the said B. I. Salinger Jr., shall appear for trial at the District Court of the United States for the District of South Dakota, to be holden at the City of Sioux Falls in said District on the First Tuesday of April, 1923, at 10:30 o'clock in the forenoon of said day, upon an indictment filed in said district, Southern Division, and shall appear before said District Court of the United States for the District of South Dakota, on such day or days thereafter as said District Court may order, and shall at all times render himself amenable to the order and process of the said Court, to answer all such things and matters as shall be objected against him, and not depart the jurisdiction of the Court without leave; and if convicted shall appear for judgment, and render himself in execution thereof upon such day as said District Court may order, then this recognizance to be void, otherwise to remain in full force and virtue.

B. I. Salinger, Jr., Principal. Southern Surety Company,
By Hulbert T. C. Beardsley, Attorney-in-Fact. (Seal.)

Acknowledged before me the day and year first above written.
 Alex. Gilchrist, Jr., Clerk of the District Court of the
 United States for the Southern District of New York.
 (Seal.)

A true copy. (Signed Alex. Gilchrist, Jr., Clerk. (Seal.)

[fol. 130] EXHIBIT IN EVIDENCE: COPY OF ORDER ON MANDATE OF
 U. S. CIRCUIT COURT OF APPEALS, SECOND CIRCUIT—
 Filed April 20, 1923

UNITED STATES OF AMERICA,
 Southern District of New York, ss:

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate, to-wit Order on Mandate, in case of B. I. Salinger, Jr., Miscellaneous Docket 7/356, filed in this Court on March 16, 1923, have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this Second day of April, in the year of our Lord, One Thousand Nine Hundred and twenty-three, and of the Independence of the said United States the One Hundred and Forty-seventh.

(Signed) Alex. Gilchrist, Jr., Clerk.

[fol. 131] AT A STATED TERM OF THE DISTRICT COURT OF THE
 UNITED STATES FOR THE SOUTHERN DISTRICT OF
 NEW YORK HELD AT THE UNITED STATES COURT-
 HOUSE AND POST-OFFICE BUILDING, IN THE BOROUGH
 OF MANHATTAN, CITY OF NEW YORK, ON THE 16TH
 DAY OF MARCH, 1923

Present: Hon. Augustus N. Hand, District Judge.

M. 7-356

[Title omitted]

ORDER ON MANDATE

This cause having heretofore come on for hearing in this Court upon writs of habeas corpus and certiorari allowed to the above

named B. I. Salinger, Jr., and an order having been entered in said cause dismissing said writs, and the said B. I. Salinger, Jr., having thereafter by an appeal obtained a transcript of the record to be brought into the United States Circuit Court of Appeals for the Second Circuit, and the said United States Circuit Court of Appeals having transmitted to this Court its mandate dated March 14th, 1923, by which it appears that, at the October Term of said Court for 1922, this cause came on to be heard and was argued by counsel, on consideration whereof it was ordered, adjudged and decreed that the order of said District Court be affirmed and that such further proceedings be had in said cause, in accordance with the decision of the said United States Circuit Court of Appeals as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Now upon reading and filing said mandate and upon motion of William Hayward, United States Attorney for the Southern District of New York, it is hereby

Ordered, adjudged and decreed that the judgment and order of the said United States Circuit Court of Appeals in this Cause be and the same is hereby made the judgment of this Court, and it is further

[fol. 132] Ordered that the said B. I. Salinger, Jr., personally surrender himself into the custody of the United States Marshal for the Southern District of New York, New York, N. Y., on or before the 19th day of March, 1923, at 10:30 o'clock in the forenoon, and that the said United States Marshal transport the said B. I. Salinger, Jr., to the District of South Dakota, and there deliver the said B. I. Salinger, Jr., into the custody of the United States Marshal for said District, then and there to be dealt with according to law.

(Signed) Augustus N. Hand, United States District Judge.

[fol. 133] EXHIBIT IN EVIDENCE: MINUTE ENTRIES OF U. S. DISTRICT COURT, DISTRICT OF SOUTH DAKOTA—Filed April 20, 1923

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN
AND FOR THE SOUTHERN DIVISION OF THE DISTRICT OF SOUTH
DAKOTA

At a session of the District Court of the United States for the District of South Dakota, continued and held pursuant to adjournment, in the United States Court Room, in the City of Sioux Falls, in the District of South Dakota, on the 3rd day of April, A. D. 1923, the Honorable James D. Elliott, Judge, being present and presiding in said Court, the following among other proceedings were had and done, to-wit:

Indictment No. 1978, S. D.

[Title omitted]

Now at this time comes S. W. Clark, Esq., United States District Attorney, and moves the arraignment of the defendant, B. I. Salinger, Jr., and said defendant not appearing in court, and having been three times severally called at the court room door by the United States Marshal to appear in court, as he was bound to do, or forfeit his bond, and having made default said United States District Attorney, S. W. Clark, Esq., moves the Court for the forfeiture of the bail bond of said defendant, B. I. Salinger, Jr., in the sum of Fifteen Thousand Dollars, heretofore given for his appearance before this Court at this time; and said United States District Attorney also moves the Court for a bench warrant to issue forthwith for the arrest of said defendant; whereupon, it is Ordered, by the Court, that the hearing on said motions, be and the same is hereby set down for April 4th, A. D., 1923, at two o'clock in the afternoon, and the United States District Attorney is directed to so notify the attorney for said defendant.

And afterwards, to-wit, on the 4th day of April, A. D., 1923, the following among other proceedings were had and done, to-wit:

Indictment No. 1978, S. D.

THE UNITED STATES, Plaintiff,

vs.

FRED C. SAWYER, CLARENCE H. BURLINGAME, and B. I. SALINGER, JR., Defendants.

[fol. 134] This being the time fixed by the Court for hearing, the motion for the forfeiture of the bail of defendant, B. I. Salinger, Jr., in the sum of Fifteen Thousand Dollars, under Indictment No. 1978 S. D., and the matter coming on for hearing, the Court directs the Marshal to call said defendant three times at the door of the court room, the Marshal reports that he has so called the said defendant and that said defendant failed to appear; and the United States District Attorney, S. W. Clark, Esq., having renewed his motion for the forfeiture of the bail bond of B. I. Salinger, Jr., which had heretofore been presented to this Court in the sum of Fifteen Thousand Dollars, conditioned for the appearance of B. I. Salinger, Jr., before this Court on the 3rd day of April, A. D. 1923, at the opening of the Term, the Court states that in his opinion the defendant has not only disregarded his duty under his obligation, as set forth in the terms of this bond to appear here, but that he has resorted to say the least, to most questionable methods; that he has no confidence whatever in the position assumed by counsel for defendant that this defendant could by collusion with a bonding company go to a distant jurisdiction and surrender himself there and

that a United States Commissioner could fix a bond of \$5,000.00, the terms of which are entirely unknown to this jurisdiction at this time, and thereby relieve him from the necessity of fulfilling the obligation of this bond by surrendering himself here for trial; whereupon, it is Ordered by the Court, that the bail bond of said defendant, B. I. Salinger, Jr., in the sum of Fifteen Thousand Dollars, conditioned as above stated be, and the same is hereby forfeited; and it is further Ordered that the Clerk of this Court file the telegrams presented by the United States Attorney relating to the present whereabouts of said Defendant.

And, to-wit, on the same day, the following among other proceedings were had and done, to-wit:

Indictment No. 1978, S. D.

[Title omitted]

[fol. 135] Now at this time comes S. W. Clark, Esq., United States District Attorney, and moves the Court for the issuance of a bench warrant for the arrest of B. I. Salinger, Jr., by reason of the forfeiture of his bond, and the fact that he is under indictment and has not responded; whereupon, it is Ordered by the Court, that a warrant issue forthwith for the arrest of the said defendant, B. I. Salinger, Jr., returnable forthwith at Sioux Falls, South Dakota.

I, Jerry Carleton, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that the above and foregoing are true copies of the entries made upon the Journal of the proceedings of said Court, in the case therein entitled; that I have compared the same with the original entries thereof, and the same is a true transcript therefrom, and of the whole thereof.

Witness my official signature and the seal of said Court, at Sioux Falls, this 5th day of April, A. D., 1923.

(Signed) Jerry Carleton, Clerk, By C. C. Schwarz, Deputy
(Seal.)

[fol. 136] EXHIBIT IN EVIDENCE: BENCH WARRANT—Filed April 20, 1923

UNITED STATES OF AMERICA,
District of South Dakota:

To the Marshal of the United States for the District of South Dakota and to his deputies or any or either of them:

Whereas, at a term of the District Court of the United States, for the District of South Dakota, begun and held at Deadwood, within and for the District aforesaid on the 20th day of May, A. D., 1922, the Grand Jurors in and for the said District of South Dakota

brought into the said Court, a true bill of indictment against, B. I. Salinger, Jr., charging him with the crime of using the United States mails to defraud, as by said indictment now remaining on file, and of record in the said Court may more fully appear, to which said indictment the said B. I. Salinger, Jr., has not yet appeared or pleaded.

Now therefore, you are hereby commanded in the name of the President of the United States to apprehend the said B. I. Salinger, Jr., and bring his body before the said Court at Sioux Falls, South Dakota, to answer the indictment aforesaid, the bail bond of said defendant having been this day forfeited by order of the Court.

Witness, The Honorable James D. Elliott, Judge of said United States District Court, District of South Dakota, and my hand and seal of said Court, at Sioux Falls, this 4th day of April, A. D., 1923.

(Sgd.) Jerry Carleton, Clerk, By C. C. Schwarz, Deputy.
(Seal of Court.)

UNITED STATES OF AMERICA,
District of South Dakota, ss:

Received the within Warrant on the 4th day of April, 1923, and after a due and diligent search I am unable to find the within-named Defendant Ben I. Salinger, Jr., within this District.

W. H. King, United States Marshal, By N. H. Jensen,
Deputy.

[fol. 137]

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I, Jerry Carleton, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy is a correct transcript from such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Sioux Falls, in said District this 5th day of April, A. D., 1923.

(Signed) Jerry Carleton, Clerk, By C. C. Schwarz, Deputy.
(Seal.)

[fol. 138] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

WARRANT OF REMOVAL—Filed April 26, 1923

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

To the President of the United States of America to the Marshal of the United States for the Eastern District of Louisiana and his deputies or any or either of them:

Whereas: Ben I. Salinger, Jr., has been brought before me upon a commitment made by the United States Commissioner for the purpose of obtaining a warrant for the removal of the said Ben I. Salinger, Jr., to the District of South Dakota, in which said District the said Ben I. Salinger, Jr., is charged with a violation of Section 215 of the United States Criminal Code and in which said district the offense for which said prisoner has been committed is to be tried, a copy of which commitment is hereto annexed:

And whereas the Assistant United States Attorney for the Eastern District of Louisiana, has made application to me under the provisions of Section 1014 of the Revised Statutes of the United States for a warrant for the removal of the said prisoner to the District of South Dakota at Sioux Falls, South Dakota, and an examination of the matter having been made by me: Now, Therefore, you are hereby commanded to remove said prisoner now in your custody forthwith to the said District of South Dakota, at Sioux Falls, South Dakota, and there deliver him to the United States Marshal for the District of South Dakota, at Sioux Falls, South Dakota, or some proper officer authorized to receive the said prisoner in order that he may be dealt with according to law.

Given under my hand and seal of the District Court of the United States, for the Eastern District of Louisiana, at the City of New Orleans, this 26th day of April, 1923.

(Signed) Rufus E. Foster, Judge.

[fol. 139]

FINAL MITTIMUS

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

The President of the United States of America to the Marshal of the Eastern District of Louisiana and to the keeper of the House of Detention in the city of New Orleans, Greeting:

Whereas, Ben I. Salinger, Jr., has been arrested upon the oath of L. P. Bryant, Jr., for having, on or about the 20 day of May 1922,

in said District, in violation of Sec. 215 C. C. of the United States, unlawfully use the mail with a scheme to defraud,

And, after an examination being this day had by me, it appearing to me that said offense had been committed, and probable cause being shown to believe said Ben I. Salinger, Jr., committed said offense as charged, I have directed that said Ben I. Salinger, Jr., be held to bail in the sum of \$15,000 to appear before the District Court of the United States for the Eastern District of Louisiana, on the 20 day of April 1923 and from time to time thereafter to which the case may be continued and he having failed to give the required bail:

Now these are therefore, in the name and by the authority aforesaid, to command you, the said Marshal, to commit the said Ben I. Salinger, Jr., to the custody of the Keeper of said Jail of the City of New Orleans, and to leave with said Jailer a certified copy of this writ; and to command you, the Keeper of said Jail of said City, to receive the said Ben I. Salinger, Jr., prisoner of the United States of America, into your custody, in said Jail, and him there safely to keep until he be discharged by due course of law.

In witness whereof, I have hereto set my hand and seal at my office in said District, this 18 day of April A. D. 1923.

(Signed) A. H. Browne, United States Commissioner for said Eastern District of Louisiana. (Seal)

Received this Mittimus with the within named Prisoner, on the 18 day of April A. D. 1923, and on the same day I committed the said Prisoner to the custody of the Jail Keeper named in said Mittimus, with whom I left at the same time a certified copy of this Mittimus.

Dated April 18, 1923.

(Signed) Victor Loisel, United States Marshal, Eastern District of Louisiana, By — — — Deputy.

[fol. 140] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

No. 17238

[Title omitted]

RETURN OF COMMISSIONER TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA IN RESPONSE TO THE WRIT OF CERTIORARI ISSUED OUT OF SAID COURT ON THE 18TH DAY OF APRIL, 1923—Filed April 20, 1923

Comes now Arthur H. Browne, United States Commissioner for the Eastern District of Louisiana, and in response to the writ of certiorari to him directed by the Honorable Rufus E. Foster, Judge of said District Court, of date April 18th, 1923, shows the following

proceedings had before him as such Commissioner in the above matter.

April 6th, 1923.—Verified complaint filed by L. P. Bryant, Jr., Assistant United States Attorney for the Eastern District of Louisiana, same being hereto attached together with a certified copy of the indictment referred to in said complaint.

April 6th, 1923.—Warrant of arrest issued and placed in hands of Marshal for service, same being hereto attached.

April 6th, 1923.—Defendant B. I. Salinger, Jr., was brought before me by the United States Marshal for the Eastern District of Louisiana, under the warrant of arrest above specified, and arraigned whereupon he applied for bond and bond for his appearance was fixed in the sum of \$15,000. Defendant gave bond for his appearance before me in said sum \$15,000, and the case was subsequently fixed for hearing before me on April 16th, 1923, at 11:00 a. m. and thereafter the hearing was continued by me to April 18, 1923 owing to the fact that the accused was unable to be present.

Plaintiff appeared through L. P. Bryant, Jr., Assistant United States Attorney for the Eastern District of Louisiana, and S. W. [fol. 141] Clark, United States Attorney for the District of South Dakota, and defendant appeared, in person, and by his attorney, St. Clair Adams, and the following proceedings were had:

Defendant made an application for a continuance but upon objection to same by Plaintiff and no good cause being shown for continuance, motion was denied:

Plaintiff offered in evidence the certified copy of the indictment returned by the Grand Jury for the District of South Dakota, attached to the complaint and hereinbefore referred to. No objection on the part of the defendant and same was received.

Plaintiff offered in evidence certified copy of bench warrant issued by Honorable James D. Elliott, United States District Judge, District of South Dakota, of date April 4th, 1923. No objection and same was received in evidence and is hereto attached.

Request being made of defendant's attorney as to whether he would admit defendant's identity, he refused to admit identity and thereupon oral evidence was received proving the identity of defendant with the person named in the indictment, and documentary evidence in the form of a certified copy of the petition for writ of habeas corpus theretofore filed in the United States District Court for the Eastern District of Louisiana by the defendant, B. I. Salinger, Jr., wherein he declares himself to be one and the same party as the B. I. Salinger, Jr. referred to in the indictment returned by the [fol. 142] Grand Jurors for the District of South Dakota, certified copy of which said petition for writ of habeas corpus is hereto attached and made part of this return.

After reception of the above evidence the Government rested its case.

The defendant did not offer any evidence, and it appearing to the Commissioner that there is probable cause to believe that a public offense has been committed, as specified in the complaint and indictment, and that the defendant, B. I. Salinger, Jr., is guilty

thereof, thereupon, it was, by the Commissioner ordered, that the said B. I. Salinger, Jr., be committed to the District Court for the Eastern District of Louisiana, to await further action by said court in accordance with law.

A commitment was thereupon issued in the form of the copy hereto attached, and delivered to the United States Marshal for the Eastern District of Louisiana, for the detention of the said B. I. Salinger, Jr.

Neither party requested stenographic notes as to oral testimony taken and record was not kept thereof.

The foregoing, together with the Exhibits hereto attached, constitutes a full and complete record of the proceedings had before me in the above entitled matter, all of which is herewith transmitted to the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana in response to the writ of certiorari to me directed.

Given under my hand and seal, this 18th day of April, 1923.

(Signed) A. H. Browne, U. S. Commissioner. (Seal.)

[fols. 143-148] UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

No. 17238

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Omitted; printed side p. 2 ante

[fols. 149 & 150] ORDER ISSUING WRIT—Omitted; printed side p. 8 ante

[fol. 151] FINAL MITTINUS—Omitted; printed side page 9 ante

[fol. 152] WARRANT

UNITED STATES OF AMERICA,
District of South Dakota:

To the Marshal of the United States for the District of South Dakota and to his Deputies or any or either of them:

Whereas, at a term of the District Court of the United States for the District of South Dakota, begun and held at Deadwood, within

and for the District aforesaid, on the 20th day of May, A. D. 1922, the Grand Jurors in and for the said District of South Dakota, brought into the said Court, a true bill of indictment against B. I. Salinger, Jr., charging him with the crime of using the United States mails to defraud as by said indictment now remaining on file, and of record in the said Court may more fully appear, to which said indictment the said B. I. Salinger, Jr., has not yet appeared or pleaded.

Now, therefore, you are hereby commanded in the name of the President of the United States to apprehend the said B. I. Salinger, Jr., and bring his body before the said Court at Sioux Falls, South Dakota, to answer the indictment aforesaid, the bail bond of said defendant having been this day forfeited by order of the court.

Witness, the Honorable James D. Elliott, Judge of said United States District Court, District of South Dakota, an- my ha-d and seal of said Court, at Sioux Falls this 4th day of April A. D. 1923.

(Signed) Jerry Carleton, Clerk, By C. C. Schwarz, Deputy.
(Seal of Court.)

[fol. 153] UNITED STATES OF AMERICA,
District of South Dakota:

Received the within Warrant on the 4th day of April, 1923, and after a due and diligent search I am unable to find the within-named Defendant Ben I. Salinger, Jr., within this district.

W. H. King, United States Marshall, By N. H. Jensen,
Deputy.

[fol. 154]

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I, Jerry Carleton, Clerk of the District Court of the United States for the District of South Dakota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy is a correct transcript from such original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Sioux Falls in said District this 5th day of April A. D. 1923.

(Signed) Jerry Carleton, Clerk, By C. C. Schwarz, Deputy.
(Seal.)

[fol. 155] UNITED STATES COURTS,
Eastern District of Louisiana,
City of New Orleans, ss:

BOND

Be it Remembered, That on this 6th day of April, 1923, A. D., before me, Henry J. Carter, a Clerk of the District Court of the United States for the said Eastern District of Louisiana, personally came B. I. Salinger, Jr., residing at Sioux City, Iowa, as Principal, American Surety Company a Corporation, as Surety, of New York, and, jointly and severally acknowledged themselves to owe the United States of America the sum of Fifteen Thousand (\$15,000.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the conditions following, to wit:

The Condition of the Recognizance is such, that if the said B. I. Salinger, Jr., shall personally appear before the United States Commissioner for the Eastern Dist. of La., in and for the District aforesaid, at New Orleans, La., at 11 A. M., on the 16 day of April A. D. 1923, and from day to day thereafter until lawfully discharged, and then and there to answer the charge of having, on or about the — day of — within said District, in violation of Section 215 C.C. of the Revised Statutes of the United States, unlawfully and then and there abide the judgment of the said Court and not depart without leave thereof, then this recognizance to be void, otherwise to remain in full force and virtue.

(Signed) B. I. Salinger. [L. S.] (Signed) American Surety Company of New York, By Chas. Hoffman, Resident Vice-Pres. Attest: F. M. Cobb, Resident Assistant Secretary. (Seal.)

Taken and acknowledged before me on the day and year first above written.

(Signed) H. J. Carter, Clerk U. S. District Court, E. D. of La.
(Signed) H. C. Moseley, (Signed) W. L. Brown, Notaries
(Seal.)

— — — a surety on the annexed recognizance, being duly sworn, deposes and says that he resides in the City of New Orleans in said District, that he is worth the sum of — Dollars, over and above all his just debts and liabilities, in property subject to execution and sale.

(Affiant's Signature:) — — —.

Sworn to and subscribed before me, this 6 day of April, A. D. 1923. (Signed) A. H. Browne, U. S. Commissioner for the Eastern District of La.

[fol. 155a] **UNITED STATES OF AMERICA,**
Eastern District of Louisiana:

No. 7554.

Affidavit by L. P. Bryant, Jr.

UNITED STATES

vs.

BEN I. SALINGER, JR.

WARRANT

The President of the United States of America to the U. S. Marshal for the Eastern District of Louisiana, or either of his lawful deputies, Greeting:

You are hereby commanded to take and apprehend and bring before me the body of Ben I. Salinger, Jr., at my office then and there to answer to a charge on affidavit hereto annexed made against said Ben I. Salinger, Jr., per notary Sec. 215 C. C. And what you do in the premises make return to me.

Witness my hand in the City of New Orleans, State of Louisiana, this 6 day of Apr. 1923.

(Signed) A. H. Browne, United States Commissioner.
(Seal.)

[fol. 156] **UNITED STATES OF AMERICA,**
Eastern District of Louisiana,
New Orleans Division, ss:

No. 7554

AFFIDAVIT OF L. P. BRYANT, JR.

Before me, Arthur Horace Browne, a United States Commissioner for the Eastern District of Louisiana, New Orleans Division, personally appeared this day L. P. Bryant, Jr. who being first duly sworn, deposes and says that on or about the 20th day of May A. D. 1922, at Sioux Falls, South Dakota, in the Western District of South Dakota, an indictment was duly filed by the Grand Jury endorsed as number 983 of the Docket of the United States District Court *court* for said District in which are Ben I. Salinger Jr. was made defendant and charged with others therein named with having devised a certain scheme to defraud and in the execution thereof with having unlawfully feloniously and knowingly caused to be mailed and delivered by United States Mail certain numerous letters described in the various Courts of said indictment all in violation of Sec. 215 of

the United States Criminal Code, which said indictment is referred to as part hereof, that the said Salinger is a fugitive from Justice and now within the Eastern District of Louisiana, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Deponent further says that he has reason to believe and does believe that S. W Clark *are* material witnesses to the subject matter of the complaint.

(Deponent's signature:) (Signed) L. P. Bryant, Jr. (Seal.)

Sworn to before me, and subscribed in my presence, this 6 day of Apr. A. D. 1923. (Signed) A. H. Browne, United States Commissioner. [Seal.]

[fol. 157] PETITION FOR APPEAL AND ORDER—Filed Apr. 27, 1923

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL

To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana, New Orleans Division:

The undersigned petitioner, B. I. Salinger, Jr., feeling himself aggrieved by the proceedings, orders and rulings had in the District Court of the United States for the Eastern District of Louisiana, in a case therein pending, entitled "In the Matter of the Petition of B. I. Salinger, Jr., for writs of habeas corpus and certiorari," and numbered therein 17238 and particularly by an order of said Court rendered and entered therein on the twenty-sixth day of April, A. D. 1923, ordering that the writs of habeas corpus and certiorari heretofore issued therein on behalf of said petitioner be dismissed, and dismissing the same, hereby prays that an appeal by writ of error from said judgment may be allowed to him to the said Supreme Court of the United States, in accordance with law and the rules and practices of said Supreme Court and that upon the service of citation, the said appeal may operate as supersedeas until the final disposition of the case by the Supreme Court of the United States.

[fol. 158] And in support of this petition, your petitioner herewith presents and files his assignments of errors, particularly specifying the errors relied upon by him upon his said appeal.

B. I. Salinger, Jr., Petitioner. (Signed) St. Clair Adams,
His Attorney.

[fol. 159] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

Now on this day, this cause coming on before me to be heard upon the petition of B. I. Salinger, Jr., for an order allowing him to appeal by Writ of Error to the Supreme Court of the United States for the correction of certain errors alleged by him to have occurred in the proceedings described in his petition therefor, and his petition having been duly considered, together with the Assignment of Errors filed in connection therewith,

It is ordered that an appeal be allowed from the United States District Court for the Eastern District of Louisiana, to the Supreme Court of the United States, as applied for in said petition, and that said appeal and citation thereon be issued, served and returned in accordance with law.

[fol. 160] And it is further ordered that said appeal shall operate as a supersedeas until the final determination of said appeal by the Supreme Court of the United States, and that to effect said supersedeas the said B. I. Salinger, Jr., shall enter into an undertaking in the sum of One Hundred Dollars, with sureties to be approved by this Court, conditioned that he shall prosecute the appeal to effect and answer all damages and costs if he fail to make his plea good, and shall further enter into an undertaking in the nature of a supersedeas bail bond in the penal sum of Fifteen thousand Dollars, with sureties to be approved by the Clerk of the United States District Court conditioned for the appearance and surrender of the said B. I. Salinger, Jr., before the Supreme Court of the United States, Washington, D. C., and that he shall abide the further order of said Court and not depart the same, in the event the order being reviewed in these proceedings shall be here affirmed.

In witness whereof, I have hereunto set my hand at New Orleans, La., this 27th day of April, A. D., 1923.

(Signed) Rufus E. Foster, Judge United States District Court, Eastern District of Louisiana.

[fol. 161] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Apr. 27, 1923

Now comes the petitioner above named and in connection with petitioner for appeal by Writ of Error, in the above entitled cause, files herewith his Assignment of Errors which he says occurred in the

proceedings had in the cause below and upon which he will rely to reverse, set aside and correct the judgments, orders and proceedings therein had and entered; and says that there was and is manifest error appearing upon the face of the record, and the proceedings in said cause, in this:

1. The Court erred in dismissing the petition of petitioner for habeas corpus, and remanding appellant into custody for removal; and in dismissing the petition for certiorari—that is to say, it erred in not holding that this petitioner and appellant is wrongfully held and illegally imprisoned; and erred in dismissing his petition and remanding him into custody for removal from the Eastern District of Louisiana to the Southern Division of the District of South Dakota.

[fol. 162] 2. The court erred in not holding that this petitioner is held and imprisoned without due process of law and in violation of the Constitution of the United States and the Amendments thereto.

3. The Court erred especially in ordering the removal of petitioner, and in so acting under and because of the indictment at bar, which is void and gives no one power to act thereunder, for the reason that said indictment, in violation of Section 53, of the Judicial Code of the United States, was found and returned in the Western Division of the District of South Dakota, through it charges the offense to have been committed in the Southern Division of said District.

4. The indictment is void, because said Section 53 gives no authority to indict in a division in which the offense was not committed, and to transfer for trial to the division in which it is charged the offense was committed—wherefore, the Court erred, in any view in ordering the removal of the petitioner on an indictment found in a division in which no offense was committed, to the Southern Division of the District of South Dakota in which it is charged the offense was committed.

5. The Court erred in following the *Biggerstaff v. U. S.* (C. C. A.) 260 Fed. p. 926, which in passing upon the provision of said Section 53, that "all prosecutions shall be had in the Division in which committed," erroneously construes the said word "prosecutions" to mean "trial," when in truth said quoted word means both indictment and trial, and hence commands that the indictment must be found and returned in that Division wherein it is charged the offense was committed; and said decision is in opposition to the decision of [fol. 163] the Supreme Court of the United States in *Post v. U. S.* 161 U. S. 583; 16 Sup. Ct. 611; *Virginia* 148 U. S. 107; 13 Sup. Ct. 536; and *Chennault v. U. S.* 230 Fed. 942, is contrary to the weight of all authority, contrary to natural interpretation, and the rules of construction of statutes, and as well, contrary to reason.

6. The Biggerstaff case should not have been followed for the further reason that it proceeds in contradiction of the rule that the truth of an indictment does begin a prosecution, and because said decision is based on a misapprehension of Section 53, of its legislative history, and of the general understanding as to where venue lies for prosecution for violation of Section 215.

7. The Court erred in acting under said indictment, and especially in ordering the removal of petitioner to the District of South Dakota, because though the indictment was found and returned in said District, it charged nothing but an offense committed in the Northern District of Iowa; wherefore, either indictment or trial in the District of South Dakota is without jurisdiction because of the fifth and sixth Amendments to, and section three of Article three of the Constitution of the United States.

8. In so acting upon an indictment charging an offense committed in the Northern District of the State of Iowa, the court erred because it disregarded the decision in Stever v. U. S. 222, U. S. 167, and in U. S. v. Stewart, (C. C. A.) 119, Fed. 89; and U. S. v. Conrad, 59 Fed., 485, and disregarded the provisions of the fifth and sixth amendments to and section three of Article three of the Constitution of the United States.

[fol. 164] 9. The court erred in holding that the indictment competently charges a joint offense on part of petitioner and his two coindictees, and in failing and refusing to hold that a violation of Section 215 of the Judicial Code could not be joint, and that joint violation thereof is an impossible offense.

10. The Court erred in holding that the indictment set forth anything which could affect petitioner by any of the letters counted on other than those which it is charged he, himself, wrote and mailed.

11. The Court erred in holding the indictment properly charged the three defendants with jointly having violated Section 215, because the indictment charges such alleged joint actions by nothing but the naked conclusion that the "defendants" deposited and caused to be delivered, etc.

12. The Court erred because even if such joint indictment could by any chance be held to be the equivalent of an indictment for conspiracy to violate Section 215, then it is to be said that in the Stever case, there was an express count alleging such conspiracy, but it was held that still the venue did not lie in Kentucky, wherefore South Dakota lacks jurisdiction because even if a conspiracy indictment be assumed, the only overt acts charged to be in execution of the scheme or conspiracy is mailing, etc., at Sioux City, Iowa.

13. The Court erred in holding that the letters exhibited in the indictment sustain the conclusion of the Pleader that these letters were in execution or attempted execution of the scheme and artifice described in the indictment; and it erred in failing and refusing to [fol. 165] hold that said letters and each of them showed on their

face that they dealt with a completed transaction, and were not in execution of or an attempt to execute the said scheme.

14. While something is said in the body of the indictment about having sold stock in South Dakota, in pursuance of authority granted, it was error to hold the indictment properly charged said sales to have been in execution or attempted execution of the alleged scheme, for in that, the indictment charges said sales to be part of the scheme and not acts done in execution or attempted execution of the scheme.

15. The Court erred in acting under said indictment because it so uses conclusions as substitute- for facts, is so confused, lengthy and prolix as that the accused cannot tell from it what the accusation against him is; nor what he must prepare to meet on the trial—is so framed as that it should be quashed on motion.

16. On account of the aforesaid condition of the indictment it fails to inform petitioner of the nature and cause of the accusation and the court in acting under it deprived petitioner of the rights guaranteed to him by the eighth amendment to the Constitution of the United States.

17. The Court erred in refusing to hold that the indictment and each and every count thereof failed to state facts sufficient to charge this petitioner or any of the defendants therein named with any crime or offense against the United States or any law thereof, and that it failed to describe any crime or offense in violation of or punishable under any of the laws of the United States.

[fol. 163] 18. The Court erred in refusing to hold that (subject to grounds 1 to 14 inclusive hereof) the said indictment and each and every count thereof is duplicitous and not sufficiently specific, is repugnant, too vague, indefinite, ambiguous and uncertain to charge any fact sufficient to constitute any crime or offense and to inform petitioner or the other defendants of the charge against him or them or make the same clear to the common understanding; and in refusing to hold that said indictment as a whole is needlessly long and involves and contains much redundant and immaterial allegation, which defects, when taken together, render it difficult to construe and almost unintelligible, and particularly erred in refusing to hold that it fails to show that anyone whomever was in effect defrauded by your petitioner or by any of the defendants named in said indictment whether by means of the said scheme and said letters or otherwise.

By reason whereof, this petitioner and appellant prays that said order may be reversed and that he be ordered discharged.

(Signed) St. Clair Adams, Attorney for Plaintiff in Error

[fol. 167] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA

New Orleans, Thursday, April 26th, 1923.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

[Title omitted]

JUDGMENT

Extract from the Judgment Book, February Term, 1923

This cause came on at a former day to be heard upon the application of the relator for a writ of habeas corpus herein and after hearing the pleadings and the evidence and testimony offered on behalf of the respective parties, and arguments of counsel the cause was submitted when the Court took time to consider;

Whereupon, and on due consideration thereof, and for the reasons of the Court orally assigned;

It is ordered, adjudged and decreed that the alternative writ of habeas corpus heretofore issued in this cause be recalled, that the application of the relator for a writ of habeas corpus be, and the same is hereby denied, that the said petition of the relator be dismissed with costs and that the said relator, Ben. I. Salinger, Jr., be remanded to the custody of Victor Loisel, United States Marshal, for this District.

Judgment rendered April 26th, 1923.

Judgment signed, April 26th, 1923.

(Signed) Rufus E. Foster, Judge.

[fol. 168] UNITED STATES DISTRICT CT., EASTERN DISTRICT OF LOUISIANA

No. 17238

[Title omitted]

PRECIPE FOR APPELLANT—Filed May 3, 1923

To the Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division:

SIR:

You will please incorporate in the transcript of appeal to the Supreme Court of the United States, in the above entitled and numbered cause, the following:

1. Petition for writ of habeas corpus.

2. Return of the Marshal to said petition.
3. Certified copy of the indictment.
4. Certified copy of the application for an order of transfer of the cause from the Southern Division of the District Court of the United States for the District of South Dakota, to the Western Division of said District.
5. The note of evidence taken in these proceedings on the 20th day of April, 1923, containing the evidence of Fred C. Sawyer, C. H. Burlingame, B. I. Salinger, Jr., and T. I. Galbreath.
6. Copy of the Government's motion praying for an order of removal of B. I. Salinger, Jr. and copy of the commitment attached thereto.
7. Return of Arthur H. Brown, United States Commissioner, to the writ of certiorari, and all of the papers annexed to said return.
8. Judgment.
9. Petition for appeal to the Supreme Court of the United States.
10. Order of the Court allowing appeal with supersedeas.
11. Assignment of errors.

Yours truly, (Signed) St. Clair Adams, Attorney for Appellant.

[fols. 169-173]

CLERK'S CERTIFICATE

Clerk's Office

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, do hereby certify that the foregoing 168 pages contain and form a full, true, complete and perfect transcript of the record, assignment of errors and all proceedings in the case of United States ex rel. B. I. Salinger, Jr. versus Victor Loisel, United States Marshal, 17238 of the Docket of this Court, as made up in accordance with Precipes for Transcript copied therein.

Witness my hand and the seal of said court at the City of New Orleans, La., this 21st day of May, A. D. 1923.

H. J. Carter, Clerk. [Seal of the U. S. District Court for the Eastern Dist. of La., N. O. Div.]

Citations and Services omitted in printing.

Endorsed on cover: File No. 29,647. E. Louisiana D. C. U. S. Term No. 342. B. I. Salinger, Jr., appellant, vs. Victor Loisel, United States Marshal for the Eastern District of Louisiana. Filed May 24th, 1923. File No. 29,647.